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code of federal regulations

National Defense

COMPLETED

952

ORIGINAL

32

PARTS 1 TO 39, VOLUME I
[Contains DAR Sections I–VI]
Revised as of September 1, 1982

022-003-94807-4

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32

PARTS 1 TO 39

VOLUME I

[Contains DAR Sections I–VI]

Revised as of September 1, 1982

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Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
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The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

HOW TO USE THE CODE OF FEDERAL REGULATIONS

The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

OMB CONTROL NUMBERS

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

OBSOLETE PROVISIONS

Provisions that become obsolete before the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on a given date in the past by using the appropriate numerical list of sections affected. For the period before January 1, 1973, consult either the List of CFR Sections Affected, 1949-1963, or 1964-1972, published in three separate volumes. For the period beginning January 1, 1973, a "List of CFR Sections Affected" is published at the end of each CFR volume.

CFR INDEXES AND TABULAR GUIDES

A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

INQUIRIES AND SALES

For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

Title 32—National Defense is composed of eight volumes. The parts in these volumes are arranged in the following order: Parts 1 to 39 (Volumes I, II and III), Parts 40 to 399, Parts 400 to 699, Parts 700 to 799, Parts 800 to 999 and Part 1000 to End. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 1982, (September 1, 1982 for Parts 1 to 39).

DAR Regulations

The Defense Acquisition Regulations (DAR), formerly known as ASPR, comprise the first 3 volumes of Title 32 organized as follows:

(1) Title 32, Parts 1 to 39, Volume I (containing DAR sections I-VI).

(2) Title 32, Parts 1 to 39, Volume II (containing DAR sections VII-XV).

(3) Title 32, Parts 1 to 39, Volume III (containing DAR sections XVI-XXVI, and Appendices A through R).

DAR Numbering and Terminology

The DAR, as updated in these CFR volumes, contains the material from the July 1976, DAR loose leaf edition, as amended by Defense Procurement Circulars 76-1 through 76-14, and Defense Acquisition Circulars 76-15 through 76-36. The CFR volumes have been reproduced photographically from the DAR edition, and, thus, are identical in content. As such these CFR volumes contain the DAR numbering system which differs substantially from standard CFR numbering.

The terminology used in most CFR volumes is different from that which is used in these editions of the DAR. The following table shows the standard CFR terms with their DAR equivalents.

Codification Systems

CFR	DAR
Subchapter A	Regulation
Part	Section
Subpart	Paragraph
Section	Part

The terms above represent levels or rankings of text. All of the DAR are contained in Subchapter A of Chapter I of Title 32, which is referred to as the "Regulation" in DAR terminology. This Regulation is divided into "Sections". Each section is divided into "parts" and each part is divided into "paragraphs". In the CFR system, the CFR section is the basic unit of text. Consequently, in the DAR the paragraph is equivalent to the CFR section as the basic unit of text.

Within the text of a DAR paragraph, there is not a uniform numbering system for the subdivision of text as there is for text within CFR "sections". However, most DAR paragraphs are consistent within themselves. Users are advised, therefore, to be alert for codification variations in DAR numbering within DAR paragraphs.

A typical reference to DAR material might look like this: "* * * appearing at 3-201.2(a) of this Regulation * * *". In locating this material, you would first remember that the phrase "of this Regulation" means "of this Subchapter A". The first two digits in DAR numbering refer to the section and its part. Therefore, this referenced material will be found in Section III ("3"), Part 2. The next two numbers, "01", refer to a specific DAR paragraph. Often in the DAR, paragraphs are followed by a series of subparagraphs. These subparagraphs further explain the ideas established by the paragraph. The relationship between the subparagraphs and their paragraph is connoted by giving the subparagraphs the number of their paragraph followed by a period and another number. For example, paragraph 3-201, has three subparagraphs. These are numbered 3-201.1, 3-201.2, and 3-201.3. Therefore, the material at 3-201.2(a), is located in one of these subparagraphs, namely 3-201.2. The letter "(a)" which follows all the numbers, refers to a specific unit of text within the subparagraph 3-201.2.

For purposes of numbering, a DAR Appendix is the equivalent of a DAR section. Thus, references to material located in Appendices A through R, Title 32, Parts 1-39, Volume III, are handled in the same manner as DAR sections, except that in place of a first digit, a letter will appear. For example, material at "A-201.2(a)", would be found using the steps discussed above for 3-201.2(a), except that the "section" digit has been replaced by an "A" for Appendix A. For more information regarding the arrangement, numbering, citation, and cross referencing of the DAR, see Section I, Part 1, paragraph 03 (or "1-103") of the DAR itself.

PAGINATION

Each of the three volumes is individually paginated. The page number is centered at the bottom of each page.

The following information should be of use to those users who are familiar with DAR replacement page technique for updating the regulations. The upper left corner (for even pages) and the upper right corner (for odd pages) contains pagination information for each section of the DAR. These page identifiers begin numbering anew with each section. A typical reference might be "3:178." The number to the left of the colon refers to the DAR section. In this case the "3" refers to DAR section III. The number to the right of the colon refers to the page of that DAR section. Thus, the reference 3:178 indicates that the user has the 178th page of DAR section III. Amendments to the July 1976 edition are reflected by a DPC or DAC reference at the top of the page and a vertical line in the side margin of the page.

TABLE OF DAR SECTIONS AND PARTS

Each volume has a table of contents listing all the DAR sections and parts contained in the three volumes. This table of DAR Sections and Parts begins on page x of each volume.

Each of the three volumes also has a table of contents listing the DAR sections (or Appendices) contained in that particular volume and the page where each section (or Appendix) begins. This table appears on page 3 of each volume.

APPENDICES

Users of the DAR will note that former 32 CFR Part 30 was broken down into Appendices A through R. Appendices F, G, J, L, N, O, P, and Q had no previous equivalent in earlier CFR editions. Consistent with its policies regarding publication of tabulated blank forms, the Office of the Federal Register is not reproducing the forms published in Appendix F—Illustrations of Standard and Department of Defense Forms. This edition of Appendix F will not contain the text of any forms. Instead, Appendix F will consist of a list of forms. The Office of the Federal Register is also omitting Appendices N and O. Appendix N is a list of activity address numbers and Appendix O reprints the Cost Accounting Standards Board regulations which are codified in 4 CFR Chapter III.

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An index to the DAR is located at the end of Title 32, Parts 1-39, Volume III. DPCs 76-1 through 76-14 and DACs 76-15 through 76-36 have not been indexed. Entries are by subject matter and references are to DAR section and paragraph.

For this volume, Denise L. Landon was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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Reference to ASPR Manuals and Supplements:
ASPR Manual for Contract Pricing (*ASPM No. 1*) (15 Sep 75)
ASPR Small Purchase Manual (*ASPM No. 2*) (31 Mar 76)

ASPR Supplement No. 1 — Guide for Conducting Contractor Procurement System Review (CSPR) (*ASPS No. 1*) (31 Mar 77)
ASPR Supplement No. 2 — Contract File Maintenance, Closeout, and Disposition (*ASPS No. 2*) (1 Apr 70)
ASPR Supplement No. 3 — Property Administration (*ASPS No. 3*) (1 Oct 75)
ASPR Supplement No. 4 — Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists (*ASPS No. 4*) (1 Apr 68)
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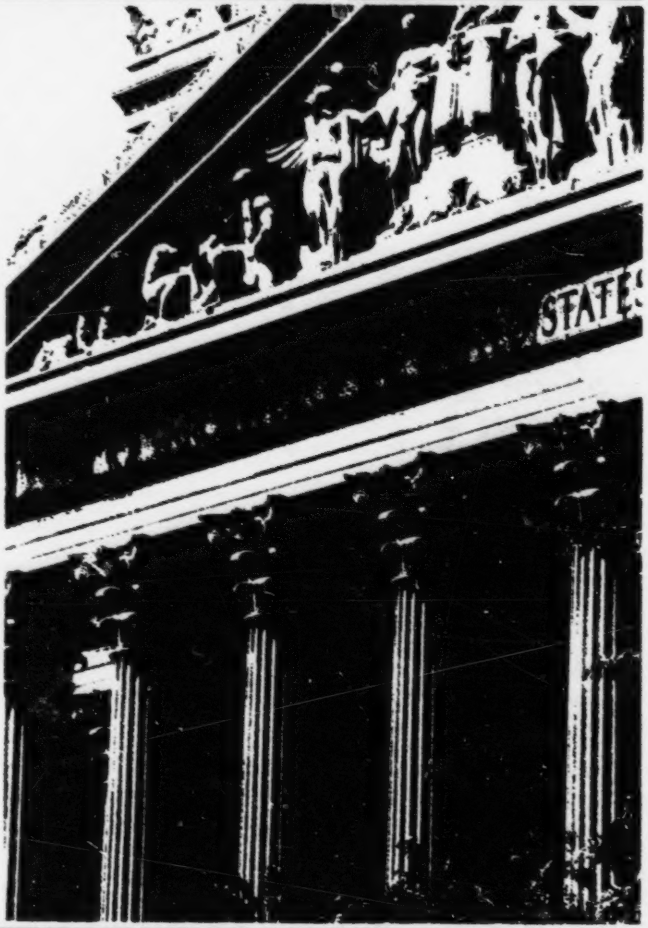

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XIX

Title 32—National Defense

Parts 1 to 39, Volume I
(This volume contains DAR Sections I-VI)

Editorial Note: The revision date of Title 32, Parts 1 to 39 (3 volumes), was changed from July 1, 1982, to Septembr 1, 1982, to incorporate several Defense Acquisition Circulars published during the month of August, 1982, and effective before July 1, 1982. For publication of subsequent regulations, see the daily Federal Register.

SUBTITLE A—Department of Defense:

Section
Chapter I—Office of the Secretary of Defense I

Subtitle A—Department of Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

Subchapter A—Defense Acquisition Regulations

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Editorial Note: The DAR Regulations do not correspond to the CFR numbering system. For a detailed explanation on the DAR and CFR see page vii of this CFR volume.

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SECTION I

GENERAL PROVISIONS

Part 1—Introduction

1-100 Scope of Part. This Part sets forth (i) introductory information pertaining to the Regulation (its purpose, applicability, content, and arrangement), and (ii) instructions for amending, implementing, disseminating, and deviating from the Regulation.

1-101 Purpose of Regulation. This Regulation, issued by the Assistant Secretary of Defense (Installations and Logistics) by direction of the Secretary of Defense and in coordination with the Secretaries of the Army, Navy, and Air Force and the Director of the Defense Supply Agency, establishes for the Department of Defense, uniform policies and procedures relating to the procurement of supplies and services under the authority of Chapter 137, Title 10 of the United States Code, or under other statutory authority.

1-102 Applicability of Regulation. This Regulation shall apply to all purchases and contracts made by the Department of Defense, within or outside the United States (but see 1-109.4), for the procurement of supplies or services which obligate appropriated funds (including available contract authorizations), or in support of foreign military sales without regard to the nature or source of funds obligated, unless otherwise specified herein, except transportation services procured by transportation requests, transportation warrants, bills of lading, and similar transportation forms. Procurement of these excepted transportation services shall be in accordance with specific regulations and instructions issued by the Military Traffic Management and Terminal Service (MTMTS), Military Sealift Command (MSC), Military Airlift Command (MAC), and the Departments.

1-103 Arrangement of Regulation.

1-103.1 *General Plan.* The Regulation is divided into sections, each one of which deals with a separate aspect of procurement; and each section is further subdivided into parts and paragraphs.

1-103.2 *Numbering.* The numbering of individual paragraphs and pages is not necessarily consecutive, and is designed to permit subsequent insertion of additional paragraphs and pages within the appropriate section and part. The number of a particular paragraph indicates the section and part where it is set forth, and also indicates whether it is subordinate to a preceding paragraph. The first portion of a paragraph number indicates the section, and the first digit of the second portion (preceded by a dash) indicates the part, in which the particular paragraph is set forth; thus, paragraph 1-104 indicates Section I, Part 1, paragraph 4. Where the number of a paragraph ends with a digit preceded by a decimal point (as 1-104.2), this indicates that it is part of the general subject covered by the basic paragraph (as 1-104). The scope of any section, when given, will be set forth in a separate introductory paragraph, the second portion of which number will be 000 (as 1-000); and the scope of any part, when given, will be set forth in a separate paragraph at the beginning of that part but with the second portion of its numbering being 100, 200, 300, etc., depending on the number of the part (for example, paragraph 1-100 sets forth the scope of Part 1 of Section I). The first digit of the number of a particular page indicates the section to which the page relates.

1-103.3 *Cross References.* Unless specifically stated otherwise, cross references in this Regulation indicate paragraphs, parts, or sections of this Regulation.

1-103.4 *Citation.* This Regulation shall be referred to as the Armed Services Procurement Regulation, and any paragraph may be cited as "ASPR" followed by the paragraph number. Thus, this paragraph would be cited as "ASPR 1-103.4" but, within this Regulation, it would be cited as 1-103.4.

1-103.5 *Dating Contract Clauses.* Contract clauses in the Regulation are identified by showing the year and month of issuance of the clause, as most recently revised, in parentheses immediately after the title, *e.g.*, INCENTIVE PRICE REVISION (FIRM TARGET) (1971 NOV). When an alternate paragraph is substituted for an existing paragraph in the clause or is made an additional paragraph in the clause "ALT" should be added to the clause title. An identifying date is to be shown in parentheses immediately following the text of the alternate paragraph. In contract forms using ASPR clauses, each clause should be shown with its identifying date in the manner prescribed above, except that (i) standard forms are not subject to this requirement and (ii) Department of Defense forms and Departmental forms that were issued prior to 1 October 1960 should not be revised solely to meet this requirement. When a clause to be used in a contract represents a deviation from this Regulation, a date will not be shown. When a clause has been developed for use solely on a specific Department of Defense form and is set forth only in Appendix F of the Regulation, a date will not be shown but the edition on the form will apply to the clause.

1-103.6 *Appendices and Supplements.*

(a) Policies and instructions concerned with procurement which, while directive, are essentially procedural in nature, will be published as appendices to this Regulation when applicable to, or required by, substantially all users of and subscribers to this Regulation. Such policies and instructions will be published as supplements to this Regulation when they are not applicable to, or required by, substantially all users of and subscribers to this Regulation.

(b) The numbering of appendices and supplements shall follow generally 1-103.2 except (i) appendices shall be identified by a capital letter and supplements by the letter "S" followed by the number of the supplement and such identification shall be the first portion of the paragraph number, and (ii) the pages shall be numbered consecutively.

(c) Appendices and supplements may provide that 1-104, 1-105, 1-108, and 1-109 of this Regulation are not applicable thereto, but unless they specifically so provide, those paragraphs shall be applicable.

(d) Supplements and Manuals are listed in the *Table of Sections and Parts* of this Regulation, under the heading "*Reference to ASPR Manuals and Supplements.*"

1-104 Content of Regulation.

(a) This Regulation will contain policies and procedures relating to the procurement of supplies and services and is designed to achieve maximum uniformity throughout the Department of Defense. Hence, implementation of the Regulation by and within the Military Departments shall be only in accordance with 1–108. This Regulation will be amended, from time to time, to set forth improved procedures which reduce contract preparation time, simplify and standardize contract forms within the Department of Defense, and improve the contracting process by standardizing procedures and instructions. In this connection, personnel at all levels, particularly the contracting level, are encouraged to submit through appropriate channels suggestions, based on operating experience, to reduce administrative burden, simplify contract forms and procedures, and otherwise accomplish the foregoing objectives.

(b) A supplement to this Regulation, entitled USEUCOM Supplement, is applicable to all purchasing offices of the Department of Defense in the North Atlantic-Mediterranean area, including all of Europe. The USEUCOM Supplement and changes thereto are developed by USEUCOM and concurred in by the Offshore Procurement Policy Coordinating Committee representing the purchasing offices in that area and, after adoption and approval by the Armed Services Procurement Regulation Committee, are published and distributed by the Headquarters, United States European Command, as an integral part of this Regulation. In addition, Headquarters USEUCOM publishes Tabs to the USEUCOM Supplement which contain source and informational material (such as government-to-government agreements and tax information) and which do not require approval by the Armed Services Procurement Regulation Committee.

1–105 Amendment of Regulation. This Regulation may be amended from time to time by the Assistant Secretary of Defense (Installations and Logistics) after coordination with the Secretaries of the Army, Navy, and Air Force and the Director of the Defense Supply Agency. Unless otherwise directed in a particular case by the Assistant Secretary of Defense (Installations and Logistics), proposed amendments shall be submitted to the Armed Services Procurement Regulation Committee. Proposals for amendments originating within the Departments of the Army, Navy, Air Force, and the Defense Supply Agency shall be submitted to the Chairman of the Armed Services Procurement Regulation Committee by the Departmental members of the Committee. However, when unusual circumstances warrant, the Secretaries may submit proposals for amendments to the Assistant Secretary of Defense (Installations and Logistics).

1–106 Other Department of Defense Publications.

1–106.1 *Department of Defense Directives, Instructions, Manuals, and Circulars.* Policies, procedures, and information concerned primarily with procurement may be published in Department of Defense Directives, Instructions, Manuals, and Circulars under any of the following circumstances:

(i) when the subject matter is not suitable for inclusion in this Regulation;

(ii) as an interim measure, pending subsequent incorporation in this Regulation; or

(iii) when the policy or procedure is expected to be effective for a period of less than six months.

1-106.2 *Defense Procurement Circular.*

(a) In accordance with the authority in 1-106.1 above, a Defense Procurement Circular, supplementary to this Regulation, shall be published as often as may be necessary or advisable for distribution to all recipients of this Regulation. Material to be published in each Defense Procurement Circular shall first be approved by the Armed Services Procurement Regulation Committee.

(b) The purposes of the Defense Procurement Circular are:

(i) to promulgate as rapidly as possible selected material revising this Regulation, in advance of the next annual edition of this Regulation;

(ii) to disseminate material applicable to procurement which is not suitable for insertion in this Regulation, but which may have the effect of a directive to, or be of importance and interest to its recipients; and

(iii) to supplement this Regulation as may be necessary in order to reduce the size and frequency of issue of subsidiary Departmental procurement instructions.

(c) Unless otherwise indicated in the introductory language preceding an item, each item in Defense Procurement Circulars will remain in effect until the effective date of the ASPR Edition which incorporates the item, or until specifically canceled.

(d) Statements in Defense Procurement Circulars to the effect that the material published therein is "effective upon receipt" or upon a specified date, or that changes set forth in the Circular are "to be used upon receipt", mean that any new or revised clauses or forms included in the Circular shall be included in invitations for bids and requests for proposal issued thereafter, unless a different meaning is expressed in the Circular. However, unless otherwise provided in the Circular, the new or revised clauses or forms need not be included in solicitations already in process of preparation where their inclusion would cause an undue delay in the solicitation.

(e) As a convenience to the Departments and to insure early and wide dissemination, selected DoD policy promulgations of general interest to Procuring Activities are republished as DPC items. Unless otherwise indicated, subsequent cancellation of such DPC items is not to be construed as cancellation of the underlying policy. Cancellation of such policy will normally be accomplished by separate and specific OSD action.

1-106.3 *Armed Services Procurement Manuals.* In accordance with the authority in 1-106.1 above, Armed Services Procurement Manuals shall be published when determined necessary or advisable. They shall contain material useful for training and instruction, but they shall not contain material which is directive in nature. Material to be published as Armed Services Procurement Manuals shall first be approved by the Armed Services Procurement Regulation Committee. Such publications and revisions thereto will be announced in Defense Procurement Circulars and shall be listed in the Table of Sections and Parts of this Regulation under the heading "Reference to Manuals and Supplements."

1-107 Dissemination and Effective Date of the Regulation (Including Appendices), Revisions, Supplements, and Manuals.

(a) The Armed Services Procurement Regulation (including Appendices), and Defense Procurement Circulars, will be distributed by the Departments to all interested activities and individuals within the Department of Defense. Supplements and Manuals shall be ordered and distributed separately as requirements indicate. The Military Departments shall obtain from the Government Printing Office the number of copies of the Regulation, Defense Procurement Circulars, Supplements, and Manuals, required to make this distribution. Private firms, individuals, and others outside the Department of Defense may obtain copies of these publications by purchase from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(b) Editions of the Armed Services Procurement Regulation shall be effective as prescribed in any such Edition. Supplements and Manuals shall be effective when issued, unless otherwise provided therein. Contract clauses and forms prescribed in such Editions shall be used in all solicitations issued after the effective date thereof, unless otherwise provided in any such Edition.

1-108 Departmental Procurement Instructions and ASPR Implementations.

(a) The Departments and their subordinate organizations shall not issue instructions (including directives, regulations, policies, or procedures), contract forms or contract clauses implementing the ASPR or covering the procurement of supplies or services or the administration of contracts for such supplies or services, unless permitted by one of the following and if consistent with (b) below:

- (i) internal procurement management instructions such as designations and delegations of authority, assignments of responsibilities; work flow procedures, and internal reporting requirements;
- (ii) any special contract clause of a nonrepetitive nature designed specifically to accomplish the peculiar requirements of an individual procurement, *provided* a clause relating to the subject matter is not set forth in this Regulation;
- (iii) a variation of any contract clause which is set forth in this Regulation but not for use verbatim, *provided* that such variation is not inconsistent with the intent, principle and substance of the ASPR clause or related coverage of the subject matter;
- (iv) interim instructions, including service test of new techniques or methods of procurement, having an effective duration not exceeding six months (unless approved for a longer period by the ASPR Committee) which are essential:
  - (A) to meet current operational needs, *provided* the instructions are submitted prior to issuance or immediately thereafter for consideration by the ASPR Committee; or
  - (B) to effect greater efficiency in procurement management, *provided* the instructions authorized are submitted for approval of the ASPR Committee prior to issuance;
- (v) procurement procedures specifically identified as being essential for carrying out the peculiar needs of specialized commodity areas when authorized by: for the Army, Deputy or Assistant Deputy for Materiel Acquisition, Office of the Assistant Secretary of the Army (Installations and Logistics); for the Navy, Assistant Deputy Chief of Naval Material for Contracts and Business Management; for the Air Force, Director of Procurement Policy, Office of the Deputy Chief of Staff (Systems and Logistics); for the Defense Logistics Agency,

Executive Director, Procurement and Production, or the Executive Director for Contract Administration; for the National Security Agency, the Director for the Defense Communications Agency, the Director; for the Defense Nuclear Agency, the Deputy Director, Operations and Administration; for the Defense Mapping Agency, the Staff Director of Logistics; and notification is given to the ASPR Committee immediately upon such authorization for the purpose of determining whether such procedures should be included in this Regulation;

(vi) procurement instructions specifically identified as being essential for carrying out the peculiar needs of overseas commands when authorized by the cognizant unified commander and notification is given to the ASPR Committee immediately upon such authorization for the purpose of determining whether such instructions should be included in this Regulation;

(vii) material determined by the ASPR Committee to be inappropriate for ASPR coverage, but appropriate for inclusion in Departmental publications.

(b) Instructions issued in accordance with (a) above shall not contain material which duplicates, is inconsistent with, or increases or restricts the use of, any authority contained in this Regulation.

(c) Each Department shall furnish to the other Departments one copy of each Departmental procurement instruction issued in accordance with (a) and (b) above.

(d) Each Department shall establish procedures to screen all instructions (including directives, regulations, policies or procedures), contract forms, and contract clauses issued pursuant to (a) through (c) above to assure strict compliance with this paragraph, and to determine if the subject matter is appropriate for inclusion in this Regulation.

1-109 Deviations From This Regulation and Department of Defense Publications Governing Procurement.

1-109.1 *Applicability*. The ASPR is not intended to stifle the development of new techniques or methods of procurement. Innovations to attain desirable objectives will occasionally necessitate deviations from ASPR, and it is the responsibility of contracting officers to request such deviations whenever they are required in the best interest of the Government. For the purpose of this paragraph, a deviation shall be considered to be any of the following:

(i) when a contract clause is set forth in ASPR for use verbatim, use of a contract clause covering the same subject matter which varies from the ASPR coverage, or use of a collateral provision which modifies either the clause or its prescribed application constitutes a deviation; however, in the case of a purchase or contract of an offshore contracting activity with a foreign contractor made outside the United States, its possessions, or Puerto Rico, such contract clauses may (subject to the direction of authority above the level of the contracting officer) be modified if no change in intent, principle, or substance is made (Offshore contracting activities shall keep the cognizant unified Commander advised of significant deviations effected under this subparagraph (i));

(ii) when a contract clause is set forth in ASPR but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle and substance of the ASPR clause or related coverage of the subject matter;

(iii) omission of any mandatory contract clause constitutes a deviation;

(iv) when a Standard, DD, or other form is prescribed by ASPR or a Department of Defense Directive, use of any other form for the same purpose constitutes a deviation;

(v) alteration of a Standard, DD, or other form (other than Departmental forms), except as authorized by ASPR or a Department of Defense Directive constitutes a deviation;

(vi) when limitations are imposed in ASPR or a Department of Defense Directive upon the use of a contract clause, form, procedure, type of contract, or any other procurement action, including but not limited to the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration or settlement of contracts, the imposition of lesser or greater limitations constitutes a deviation;

(vii) when a policy, procedure, method or practice of conducting procurement actions of any kind at any stage of the procurement process is covered by ASPR, any policy, procedure, method, or practice which is inconsistent with that set forth constitutes a deviation; or

(viii) issuance of any instructions described in 1-108(a) (including an instruction for any additional contract clause, form, or type, or additional procurement policy, procedure, method or practice, not covered in ASPR or in Department of Defense Directives) constitutes a deviation unless permitted under 1-108(a)(i)-(vii).

1-109.2 *Deviations Affecting One Contract or Transaction.*

(a) Deviations from this Regulation or a Department of Defense Directive which affect only one contract or procurement may be made or authorized in accordance with Departmental procedures *provided* (i) such circumstances justify a deviation; and (ii) written notice of such deviation, describing its nature and the basis for its justification, is furnished to each of the following:

The Deputy Under Secretary (Acquisition Management), OUSD(R&E)
Attention: DAR Council — The Pentagon — Washington, D.C. 20301

The Assistant Secretary of the Army (RDA)
Attn: DAR Council Policy Member — The Pentagon — Washington, D.C. 20310

The Assistant Secretary of the Navy (S&L)
Attn: DARS Staff
Crystal Plaza, Bldg. 5 — Washington, D.C. 20360

The Director of Contracting and Manufacturing Policy
Attn: AF/RDC(DAR) — The Pentagon — Washington, D.C. 20330

Executive Directorate, Contract Management
Defense Logistics Agency
Attn: DLA-AA — Cameron Station — Alexandria, Virginia 22314

The Director
National Security Agency
Fort George G. Meade, Maryland 20755

The Director
Defense Communications Agency
Washington, D.C. 20305

The Deputy Director, Operations and Administration
Defense Nuclear Agency
Washington, D.C. 20305

The Director, Logistics Office
Defense Mapping Agency
Bldg. 56, Naval Observatory — Washington, D.C. 20390

Such written notice shall be given in advance of the effective date of such deviations unless exigency of the situation requires immediate action.

(b) Deviations from certain DAR provisions, although affecting only one contract or transaction, are not permitted under (a) above. For example:

- (i) provisions required by statute or executive order;
- (ii) Section IX, Part 2, except as noted (see 9-202.3(a));
- (iii) Section XV, Part 1 (see 15-107(b));
- (iv) Section XV, Part 2 (see 15-204(a)); and
- (v) Appendix E (see E-218).

1-109.3 *Deviations Affecting More Than One Contract or Contractor.* Except as authorized in 1-109.2, deviations from this Regulation or a Department of Defense Directive will not be effected unless approved in advance by the Deputy Under Secretary of Defense Research and Engineering (Acquisition Management) (DUSD(AM)); *provided*, however that unanimous approval by the members of the DAR Council will constitute approval of the DUSD(AM) of all matters except those involving major policy. Written requests for such approval will be submitted to the DUSD(AM) through the DAR Council as far in advance as exigencies of the situation will permit.

1-109.4 *Deviations Required by Government-to-Government Agreements.* Notwithstanding 1-109.2 and 1-109.3, any deviation from this Regulation that is required in order to comply with a treaty or executive agreement to which the United States is a party is authorized unless the deviation would substantively affect a provision of this Regulation that is based on the requirements of a law enacted after execution of the treaty or executive agreement. In the latter event, the deviation shall, in accordance with Departmental procedures, be referred to the DAR Council for consideration, and the cognizant unified Commander shall be advised of such action. Any procurement action which constitutes a deviation from a DAR provision based on such a requirement of law shall be held in abeyance pending consideration by the DAR Council. However, if the subject matter of the DAR provision is not covered in such a treaty or executive agreement and it is decided to treat the subject matter of such a DAR provision in the contract, the treatment must be in accord with the intent, principle, and substance of the DAR provision; *provided* that, if such treatment involves a significant deviation from a clause set forth verbatim in this Regulation, the cognizant unified Commander shall be advised.

1-109.5 *Request for Approval of Proposed Deviation.* Request for approval of any deviation shall be forwarded to the approving authority through procurement channels. Each submission shall contain as a minimum:

(i) identification of the ASPR requirement from which deviation is sought;
(ii) a full description of the deviation and the circumstances in which it will be used;
(iii) a description of the intended effect of the deviation;
(iv) a copy of any pertinent document, including forms or clauses and the proposed contractor's request, if any;
(v) a statement of the period of time for which the deviation is needed; and
(vi) detailed reasons supporting the request.

1-110 Reports of Purchases and Contracts. Periodic and special reports on purchases and contracts are prescribed by the Department of Defense. These reports are designed to meet statutory and other Congressional requirements,

requirements of Federal agencies, and provide all levels of management with data on which to formulate procurement policy as well as to determine the extent of adherence to prescribed policy. Basic to the preparation of all these regular and special reports, so far as they affect individual contracting officers, is DD Form 350 (Individual Procurement Action Report) (Section XXI, Part 1). Each item of this form enters into the preparation of reports furnished the President, the Congress, and other Federal agencies, and is used for management purposes within the Department of Defense. The accuracy, completeness, and timeliness of these reports are fully dependent on the careful preparation and prompt submission of DD Form 350.

1-111 Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

1-111.1 *Reporting Procedures.* Reports of suspected criminal conduct, noncompetitive practices, kickbacks, and other procurement irregularities shall be made by each Department in accordance with procedures set forth in Part 6 of this Section.

1-111.2 *Noncompetitive Practices.*

(a) Unless bids or proposals are genuinely competitive, contract prices tend to be higher than they should be. If the Secretary concerned or his representative considers that any bid received after formal advertising evidences a violation of the antitrust laws, he is required by 10 U.S.C. 2305(d) to refer such bids to the Attorney General for appropriate action. Similarly, evidence of such violations in negotiated procurements should be referred to the Attorney General. Practices which are designed to eliminate competition or restrain trade and which may evidence possible violations of such laws include collusive bidding, follow-the-leader pricing, rotated low bids, uniform estimating systems, sharing of the business, identical bids, etc.

(b) Reports of identical or equal bids or proposals should not be submitted automatically, but only where there is some reason to believe that those bids or proposals may not have been arrived at independently. Such reports should be accompanied by conformed copies of the bid or proposal, other contract documents, and supporting data. The report should set forth:

- (i) the noncompetitive pattern or situation under consideration;
- (ii) purchase experience in the same product or service for a reasonable period of time (one or more years) prior to the receipt of the bids or proposals under consideration, including unit and total contract price and abstract of bids;
- (iii) community of financial interest among bidders, insofar as is known;
- (iv) the extent, if any, to which specification requirements or patents restrict competition;
- (v) information which may be available with respect to the pricing system employed in bids or proposals believed to reflect noncompetitive practices; and
- (vi) any other information deemed pertinent.

(c) The reports required by this paragraph do not satisfy the reporting requirement contained in 1-114.

1-111.3 *Subcontractor Kickbacks.* The Anti-Kickback Act (41 U.S.C. 51) prohibits the payment, directly or indirectly, by or on behalf of a subcontractor in any tier under any Government negotiated contract of any fee, commission, compensation, gift, or gratuity to the prime contractor or any higher tier subcontractor or to any officer, partner, employee, or agent of the prime contractor, of any higher tier subcontractor, as an inducement or acknowledgment for the award of a subcontract or order. The Act further provides that the amount of any such fee, commission, or compensation, or the cost or expense of any such gratuity or gift, whether heretofore or hereafter paid by the subcontractor, shall not be charged, either directly or indirectly, as a part of the contract price charged by the subcontractor to the prime contractor or higher tier subcontractor. It also creates a conclusive presumption that the cost of any such prohibited payment has been included in the price of the subcontract or order and ultimately borne by the Government. The Act provides for the recovery on behalf of the United States action, or by set-off of moneys otherwise owing to the subcontractor either by the United States directly or by the prime contractor. The Act imposes criminal penalties on any person who knowingly, makes or receives, directly or indirectly, any such prohibited payment.

1-111.4 *Contractor Gratuities to Government Personnel.*

(a) The right of a contractor to proceed under the contract may be terminated if it is found, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the Government to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract.

(b) To constitute a violation under the Gratuities clause (7-104.16) three elements must be present:

(i) the contractor must have a contract which contains the Gratuities clause;

(ii) the contractor, his agent, or other representative must have offered or given a gratuity to an officer, official, or employee of the Government; and

(iii) the gratuity must have been offered or given with the intent to obtain a contract or favorable treatment in the awarding or amending, or the making of determinations concerning the performance, of a contract (in this respect, intent generally must be inferred because an admission is rarely obtainable).

A lack of any of these elements will cause an action taken by the Government pursuant to the Gratuities clause to fail. Procedural requirements for gratuities hearings are set out in Appendix D.

1-112 Federal Property Management Regulations, Federal Procurement Regulations, and GSA Regulations Relating to Acquisition of Supplies and Services. Except for acquisition of ADPE under delegation of contracting authority from GSA, all policy and procedural matters of Federal Procurement Regulations and General Services Administration Regulations applicable to the Department of Defense within the scope of this Regulation are as set forth herein. Changes will be implemented through the DAR system. The applicable DoD Directives covering the assignments of responsibility for the purchasing of specific supplies under Interagency Purchase Assignment will be incorporated by reference in this Regulation. For DoD implementation of Federal Supply Schedules, see Section V, Part 1.

1-113 Standards of Conduct.

1-113.1 *Government Personnel.* All governmental personnel engaged in procurement and related activities shall conduct business dealing with industry in a manner above reproach in every respect. Transactions relating to expenditure of public funds require the highest degree of public trust to protect the interests of the Government. While many Federal laws and regulations place restrictions on the actions of governmental personnel, the latter's official conduct must, in addition, be such that the individual would have no reticence about making a full public disclosure thereof. See AR600-50, for the Army; SECNAV Instr. 5370.2E of 29 November 1967, for the Navy; AFR 30-30, for the Air Force; DLAR 5500.1, for the Defense Logistics Agency; DCA Inst. 220-50-1, for the Defense Communications Agency; DNA Inst. 5500.7A, for the Defense Nuclear Agency; and DMA Inst. 5500.1, for the Defense Mapping Agency.

1-113.2 *Organizational Conflicts of Interest.*

(a) Appendix G—Rules for the Avoidance of Organizational Conflicts of Interest sets out some of the more essential policy considerations of the Department of Defense with respect to relationships with non-Federal institutions. Specifically, Appendix G describes examples of various organizational conflicts of interest which might come into being, and rules for avoidance of such conflicts; and it provides that action must be taken to avoid placing a contractor i . a position where his judgment might be biased or where he would have an unfair competitive advantage within the scope and intent of the rules. However, the Appendix cannot of itself impose any obligations on the contractor; such obligations must be imposed by a contract clause designed to carry out the intent of the Appendix. Furthermore, potential contractors must be advised in the solicitation as to the extent of applicability of the rules, and must be given an opportunity to negotiate on the terms of the clause and its application.

(b)(1) The contracting officer is responsible for applying the rules in the Appendix to contracts under his cognizance and shall determine whether each proposed procurement is subject to the Appendix.

(2) If the contracting officer initially determines with respect to a particular procurement that a potential conflict of interest exists, he shall, before issuing the solicitation, prepare a written analysis justifying his recommendation to contract with either no restraint, partial restraint, or strict hardware exclusion provisions, including a statement as to which of the four rules (or other conflict of interest not stated in the rules) he considers applicable, and where appropriate a recommended solicitation notice and clause designed to avoid the organizational conflict of interest. This analysis and recommendation shall be reviewed by the Head of the Procuring Activity who shall examine the circumstances for benefits and detriments to both the Government and potential contractors, and who shall either approve, modify or reject the contracting officer's recommendation to contract with either no restraint, partial restraint or strict hardware exclusion provisions. In the event the Head of the Procuring Activity modifies, or rejects the con-

tracting officer's recommendation, he shall document his decision. A standard form of solicitation notice or clause is not prescribed in this Regulation since such notices and clauses must be especially adapted to apply the principle of the rules to the specific facts of each contractual situation. The clause shall spell out the specific extent of any future restrictions on the contractor. The restrictions of the proposed clause shall also have a specific time period of effectiveness. As a general rule, the time effectiveness of any clause which excludes the contractor from participation in subsequent procurement shall have a fixed term of reasonable duration as appropriate, except that where Rule 1 of Appendix G is involved the exclusion shall be permanent. A fixed term of reasonable duration is measured by the time required to avoid the circumstance of unfair competitive advantage. This is variable; for example, it may run to the date of award of the first production contract or for a stated period of time. (See Rules 2 and 3 of Appendix G.) In no event shall an exclusion be stated in the clause without a specific date, or an event certain, terminating the effectiveness of the exclusion except where Rule 1 is involved.

(3) The contracting officer shall include his recommendations and the Head of the Procuring Activity's determination, together with the written analysis, in the negotiation file or record. The approved solicitation notice and proposed clause shall then be included in the solicitation, together with a clear statement that the proposed clause and the application of the Appendix are subject to negotiation.

(4) In no case shall the clause included in a solicitation or in a contract (including letter contracts) pursuant to this paragraph 1-113.2 defer the determination of the application of the Appendix to a time after the contract has been awarded.

(5) When a contract contemplates a Rule 4 situation, it is incumbent on the contracting officer to assure himself that the agreement called for by Rule 4 is in fact executed, and that copies thereof are made available to the Government.

(c) The contracting officer shall not impose restrictions under the Appendix in follow-on procurements on any prospective contractor in the absence of a specific contractual agreement with that contractor. If, during the effective period of any restriction, procurement responsibility for the system or item involved is transferred from the procuring activity which imposed the restriction that activity shall notify the transferee of the restriction and send it a copy of the contract under which it was imposed.

(d) The Departments shall maintain, in accordance with Departmental procedures, and for an appropriate period of time as determined by the circumstances, a record of all solicitation notices and of all clauses incorporated in contracts pursuant to this paragraph 1-113.2.

1-114 Reporting of Identical Bids.

(a) *General.* Executive Order 10936 dated 24 April 1961, as implemented by the Department of Justice, requires a report to be submitted to the Attorney General on each formally advertised procurement (including small business restricted advertising) over $10,000 which involves identical bids. Identical bids are two or more bids for the same line item which:

(i) are identical on their face (regardless of evaluation factors such as discount, transportation, etc.) either as to unit price or total line item amount; or

(ii) are identical as evaluated either as to unit price or total line item amount.

A line item is an item of supply or service which independently can be made the subject of an award by the Government. However, the reporting requirements herein established for line items shall be applicable to invitations calling for line item bidding even though the invitations or bids contained qualifying or restrictive limitations on award (*e.g.*, all or none bids or award on one item being conditioned on award of other items). This reporting requirement is in addition to the reports required by 1-111.2.

(b) *Information to be Obtained From Bidders.* If a bidder fails to provide the information required by paragraph 6 of the SF 19-B or paragraph 5 on the reverse of the SF 33, and if identical bids are involved, one inquiry will be made in an effort to obtain the information. Failure to provide information concerning the parent company or the employer's identification number is not a basis for rejection of bids.

(c) *Reportable Bids.* An identical bid report shall be submitted when identical bids are received and the bid value of all line items covered by the invitation for bids exceeds $10,000 (based on the apparent low bid for each line item) except that reports will not be submitted when:

(i) bids are received only from foreign sources on invitations involving delivery and performance outside the United States, its possessions, or Puerto Rico;

(ii) there is no line item on which the apparent low bid exceeds $2,500 (line item evaluation computations beyond those normally made to determine the low bidder are not required); or

(iii) no identical bids are discovered in the normal process of evaluating bids for award and no identical bids are apparent on the face of the bid.

(d) *Submission of Reports.* Identical bid reports shall be submitted for all reportable bids on Department of Justice Form DJ-1500 (National Stock No. 7540-823-7870), available from General Services Administration stores depots. Instructions for filling out this form are printed as the cover sheet of each pad of these forms. Reports shall be made within 20 days following the disposition of all of one or more contracts or other action. Two completed copies of the report, a copy of the invitation for bids and a copy of the completed abstract of bids shall be sent to the Attorney General, Ref: AT-IBR, Washington, D.C., 20530. The abstract of bids need not be furnished when the number of line items on an invitation exceeds 100; in which event, the identical bid report shall be annotated to indicate (i) the number of line items and (ii) the number of bidders on the invitation. A copy of the identical bid report shall be retained by the purchasing activity.

(e) *Completion of Reports.* All bids for each line item on which reportable identical bids have been disclosed shall be reported regardless of whether the identical bids were the low bids. Reports are required on reportable identical bids regardless of whether an award is made on the line item, the invitation is canceled, or any other disposition is made subsequent to the public opening of the invitation.

1-115 Noncollusive Bids and Proposals.

(a) In order to promote full and free competition for Government contracts, the certification appearing in 7-2003.1 shall be included in all (i) invitations for bids and (ii) requests for proposals or quotations (other than for small purchases made in accordance with Section III, Part 6; other than for solicitations issued by overseas purchasing offices which will result in contracts performed overseas by foreign suppliers; and other than requests for technical proposals in connection with two-step formal advertising) involving firm fixed-price contracts and fixed-price contracts with economic price adjustment provisions. The certification is included in SF 18, 19-B, and SF 33, and therefore need not be added to solicitations utilizing these forms. When the solicitation authorizes the submission of oral offers and requires that such offers be confirmed in writing, it shall require that the certification be included with or be expressly incorporated by reference in and thereby made a part of the confirmation.

(b) The fact that a firm (1) has published price lists, rates, or tariffs covering items being procured by the Government, (2) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (3) has sold the same items to commercial customers at the same prices being offered the Government does not constitute, without more, a disclosure within the meaning of paragraph (a)(2) of the Certificate.

(c) It is not required that a separate written authorization be given to the signer of the bid or proposal for each procurement involved where the signer makes the certification provided in paragraph (b)(2) of the Certificate, provided that with respect to any blanket authorization given, (1) the procurement to which the Certificate applies is clearly within the scope of such authorization, and (2) the person giving such authorization is the person responsible within the bidder's or offeror's organization for the decision as to the prices being bid or offered at the time the Certificate is made in a particular procurement.

(d) After the execution of an initial certificate and the award of a contract in connection therewith, the contractor need not submit additional certificates in connection with proposals submitted on "work orders" or similar ordering instruments issued pursuant to the terms of that contract, where the Government's requirements cannot be met from another source.

(e) The Chief of the Purchasing Office shall make the determination described in paragraph (d) of the above certification.

(f) When a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with 1-111. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see 2-404.1 (b)(vii) and 3-215.

GENERAL PROVISIONS

Part 2—Definition of Terms

1-201 Definitions. As used throughout this Regulation, the words and terms defined in this paragraph 1-201 shall have the meanings set forth below, unless (i) the context in which they are used clearly requires a different meaning, or (ii) a different definition is prescribed for a particular Section or portion thereof.

1-201.1 *Change Order* means a written order signed by the contracting officer, directing the contractor to make changes which the Changes clause of the contract authorizes the contracting officer to order without the consent of the contractor (see 16-103).

1-201.2 *Contract Modification* means any written alteration in the specification, delivery point, rate of delivery, contract period, price, quantity, or other contract provisions of an existing contract, whether accomplished by unilateral action in accordance with a contract provision, or by mutual action of the parties to the contract. It includes (i) bilateral actions such as supplemental agreements, and (ii) unilateral actions such as change orders, orders for provisioned items, administrative changes, notices of termination, and notices of the exercise of a contract option.

1-201.3 *Contracting Officer* means any person who, either by virtue of his position or by appointment in accordance with procedures prescribed by this Regulation, is currently a contracting officer (see 1-400) with the authority to enter into and administer contracts and make determinations and findings with respect thereto, or with any part of such authority. The term also includes the authorized representative of the contracting officer acting within the limits of his authority. NOTE: Recent assignments of contract administration responsibilities have necessitated a separation of duties related to procurement, with some duties normally performed at a purchasing office and some normally performed at a contract administration office. For convenience of expression, when requiring performance of specific duties by a contracting officer, this Regulation may refer to a contracting officer at the purchasing office as the procuring contracting officer (PCO), and to a contracting officer at a contract administration office as an administrative contracting officer (ACO). Additionally, a contracting officer, responsible for the settlement of terminated contracts, may be referred to as the termination contracting officer (TCO). It is recognized that a single contracting officer may be responsible for duties in any or all of these areas, and reference in this Regulation to PCO, ACO, or TCO does not of itself require that duty be performed at a particular office or activity or restrict in any way a contracting officer in the performance of any duty properly assigned. For example, a duty specified by this Regulation to be performed by the ACO will be performed by a contracting officer at the purchasing office when contract administration or responsibility for that duty has been retained in the purchasing office in accordance with 20-703.3.

1-201.4 *Contracts* means all types of agreements and orders for the procurement of supplies or services. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job orders, task orders, or task letters thereunder; letter contracts, and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

1-201.5 *Department or Military Department* includes the Department of the Army, the Department of the Navy, the Department of the Air Force, the Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, the Defense Mapping Agency, and the National Security Agency.

1-201.6 *Department of Defense* comprises the Office of the Secretary of Defense and the Military Departments.

1-201.7 *Head of Procuring Activity* includes the chief, commander, or other official in charge of a Procuring Activity.

1-201.8 *Includes* means "includes but is not limited to"

1-201.9 *Labor Surplus Area Concern*. See 1-801.1.

1-201.10 *May* is permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.

1-201.11 *Negotiate and Negotiation*, when applied to the making of purchases and contracts, refer to making purchases and contracts without formal advertising.

1-201.12 *Possession* in a geographic sense includes the Virgin Islands, the Swan Islands, Guantanamo Bay, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the guano islands but does not include Puerto Rico, leased bases, or trust territories.

1-201.13 *Procurement* includes purchasing, renting, leasing, or otherwise obtaining supplies or services. It also includes all functions that pertain to the obtaining of supplies and services, including description (but not determination) of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

1-201.14 *Procuring Activity* includes:

FOR THE ARMY:

Office of the Deputy for Materiel Acquisition, Assistant Secretary of the Army (Installations and Logistics);

Directorate of Procurement & Production, Headquarters, U. S. Army Materiel Development and Readiness Command;

U. S. Army Armament Materiel Readiness Command;
U. S. Army Armament Research and Development Command;
U. S. Army Missile Command;

U. S. Army Communications Research and Development Command;
U. S. Army Electronics Research and Development Command;
U. S. Army Communications and Electronics Materiel Readiness Command;
U. S. Army Troop Support Agency;
U. S. Army Troop Support and Aviation Materiel Readiness Command;
U. S. Army Tank-Automotive Materiel Readiness Command;
U. S. Army Tank-Automotive Research and Development Command;
U. S. Army Aviation Research and Development Command;
U. S. Army Training and Doctrine Command;
U. S. Army Test and Evaluation Command;
U. S. Army Forces Command;
U. S. Army Health Services Command;

Military District of Washington, U.S. Army;
U.S. Army, Europe;
National Guard Bureau;
Office of the Chief of Engineers;
U.S. Army Communications Command;
Office of The Surgeon General;
U.S. Army Western Command;
Military Traffic Management Command;
U.S. Army Ballistic Missile Defense Organization; and
Assistant Chief of Staff for Automation and Communications.

FOR THE NAVY:
Headquarters, Naval Material Command;
Office of Assistant Deputy Chief of Naval Material
  for Contracts and Business Management;
Naval Air Systems Command;
Naval Data Automation Command;
Naval Electronic Systems Command;
Naval Facilities Engineering Command;
Naval Sea Systems Command;
Naval Supply Systems Command;
Office of Naval Research;
Navy Aviation Supply Office;
Military Sealift Command;
Ships Parts Control Center;
United States Marine Corps; and
Installations and Logistics Department,
  Headquarters, U.S. Marine Corps.

FOR THE AIR FORCE:
HQ USAF, Director of Contracting and Acquisition Policy;
Air Force Logistics Command;
Air Force Systems Command;
Strategic Air Command;
Tactical Air Command;
Air Force Communications Command;
Military Airlift Command;
Air Training Command;
Pacific Air Forces;
United States Air Forces in Europe; and
Alaskan Air Command.

FOR THE DEFENSE LOGISTICS AGENCY:
Office of the Deputy Director for Contract
  Administration Services;
Office of the Executive Director, Procurement
  and Production;
Defense Supply Centers; and
Defense Personnel Support Center.

FOR THE DEFENSE COMMUNICATIONS AGENCY:
Headquarters, Defense Communications Agency; and
Defense Commercial Communications Office.

FOR THE DEFENSE NUCLEAR AGENCY:
Headquarters, Defense Nuclear Agency.

FOR DEFENSE MAPPING AGENCY:
Headquarters, Defense Mapping Agency, Logistics Office.

FOR THE NATIONAL SECURITY AGENCY:
Headquarters, National Security Agency.

FOR THE DEFENSE SUPPLY SERVICE--WASHINGTON:
Director, Defense Supply Service--Washington

It also includes any other procuring activity hereafter established. The number and designation of particular procuring activities of any Military Department may be changed by directive of the Secretary.

1-201.15 *Secretary* means the Secretary, the Under Secretary, or any Assistant Secretary of any Military Department. Secretary shall also include the Director and Deputy Director of the Defense Supply Agency, the Director of the Defense Communications Agency, the Director, Defense Nuclear Agency, the Director, Defense Mapping Agency, and the Director of the National Security Agency, except to the extent that any law or executive order limits the exercise of authority to persons at the Secretarial level. In the latter situation, such authority shall be exercised by the Assistant Secretary of Defense (Installations and Logistics).

1-201.16 *Shall* is imperative.

1-201.17 *Small Business Concern*. See 1-701.1.

1-201.18 *Supplemental Agreement* means any contract modification which is accomplished by the mutual action of the parties. (See 16-103.)

1-201.19 *Supplies* means all property except land or interest in land. It includes public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts, and accessories thereto; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing. "Supplies" as used in this Regulation is synonymous with "property" as described in 10 U.S.C. 2303(b).

1-201.20 *United States*, when used in a geographic sense, means the States and the District of Columbia.

1-201.21 *Construction*. See 18-101.1.

1-201.22 *Classified Procurement* is that which requires access to classified information ("Confidential, Secret or Top Secret") either to submit a bid or proposal, or to perform the contract; see 1-320.

1-201.23 *Designee*, as used, for example, in the phrase, "Head of a Procuring Activity or his designee", may include one or more officials.

1-201.24 *Purchasing Office* means the office which awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office.

1-201.25 *Contract Administration Office* means the office which performs assigned functions related to the administration of contracts, and assigned preaward functions.

1-201.26 *Assignment of Contract Administration* means that process whereby identified functions, duties, or responsibilities related to the administration of contract are assigned either by this Regulation or by individual assignment to a contract administration office.

1-201.27 *Transfer of a Contract* means that process whereby all future responsibility for a contract held by an individual or office is transferred, in writing by proper authority, to another office to take action necessary to carry out the responsibility transferred.

1-201.28 *Local Purchase* means the authorized purchase of materials, supplies and services by an installation for its own use or the use of an installation or activity logistically supported by it. Local purchase is not limited to the immediate geographical area in which the purchasing installation is located.

1-201.29 *Automatic Data Processing Equipment* (*ADPE*) means:

(i) Digital and Analog Computer components and systems, irrespective of type of use, size, capacity or price;

(ii) all peripheral, auxiliary, and accessorial equipment used in support of Digital and/or Analog Computers, either cable connected, or "self standing" and whether selected or acquired with the computers or separately;

(iii) Punched Card Machines (PCM) and systems used in conjunction with or independently of Digital or Analog Computers; and

(iv) Digital and Analog Terminal and Conversion equipment that is acquired solely or primarily for use with a system which employs a Computer or Punched Card Machines.

1-201.30 *Paying Office* means the office which makes payments under the contract.

1-201.31 *Supporting Contract Administration* means the performance by another contract administration office of specific contract administration functions as required by the office to which the contract has been assigned for administration.

1-201.32 *Standard Dating Technique.* When it is necessary to insert the date on any contractual document or required report, it shall be written using seven characters in the following order: year (two digits), month (three letters), and day (two digits). For example, July 6, 1968, would be entered on contractual documents and required reports as "68 JUL 06."

1-201.33 *Exhibit* means a document attached to a procurement instrument, referenced by its capital letter identifier in a line or subline item in the procurement instrument Schedule, which establishes deliverable requirements in the attached document as an alternative to establishing an extensive list of line or subline items in the procurement instrument Schedule; see 20-305.

1-201.34 *Classified Contract* is any contract that requires or will require access to classified information by the contractor or his employees in the performance of the contract. A contract may be a classified contract even though the contract document is not classified.

1-201.35 *Data* means recorded information, regardless of form or characteristic.

1-201.36 *Technical Data* means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; or computer printouts. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications and related information, and documentation related to computer software. Technical data does not include computer software or financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

1-201.37 *Reserved.*

1-201.38 *Computer Program* means a series of instructions or statements in form acceptable to a computer, designed to cause the computer to execute an operation or operations. Computer programs include operating systems, assemblers, compilers, interpreters, data management systems, utility programs, sort-merge programs, and ADPE maintenance/diagnostic programs; as well as applications programs such as payroll, inventory control, and engineering analysis programs. Computer programs may be either machine-dependent or machine-independent, and may be general-purpose in nature or designed to satisfy the requirements of a particular user.

1-201.39 *Automatic Data Processing System (ADPS)* means an interacting assembly of procedures, processes, methods, personnel, communications, and automatic data processing equipment to perform a series of data processing operations—a combination of automatic data processing resources and automatic data systems.

1-201.40 *Offer* means *bid* where the procurement is advertised, and *proposal* where the procurement is negotiated.

1-201.41 *Major Systems Acquisition* is an acquisition specifically designated by the Secretary of Defense / Deputy Secretary of Defense under the procedures set forth in Department of Defense Directive Number 5000.1, and such other systems as designated by the Secretaries of the Military Departments.

GENERAL PROVISIONS

Part 3—General Policies

1-300 Methods of Procurement.

1-300.1 *Competition.* All procurements, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

1-300.2 *Formal Advertising.* Purchases and contracts for supplies and services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be in accordance with detailed requirements and procedures set forth in Section II.

1-300.3 *Negotiation.* If the use of formal advertising is not feasible and practicable, purchases and contracts for supplies and services may be negotiated in accordance with the detailed requirements and procedures set forth in Section III.

1-300.4 *Advance Procurement Planning.* See Part 21 of this Section I.

1-301 Interdepartmental and Coordinated Procurement. Supplies and services may be obtained in appropriate circumstances as provided in Section V by such means as interdepartmental and coordinated procurement.

1-302 Sources of Supplies and Services.

1-302.1 *Existing Government Assets.* To the extent possible, supplies shall be obtained from releasable assets of the Department of Defense or from surplus or excess stocks in the hands of any other Government agency. This shall specifically include purchase of excess strategic and critical materials available for transfer from the General Services Administration as listed in periodic GSA Bulletins which are distributed in accordance with Departmental procedures (see 5-705). Personnel responsible for issuing purchase requests shall insure compliance with policies pertaining to the utilization of existing Department of Defense material assets, as set forth in the Defense Utilization Manual (DoD 4140.34M). All purchase requests involving estimated expenditures of $50 or more for items centrally managed at inventory control points will be appropriately annotated with a statement to the effect that Department of Defense-wide review of assets has been initiated or completed, as appropriate, in compliance with the Defense Utilization Manual. This procedure is not applicable to automated procurements where procedures have been established under the automated system for a review of assets in accordance with DoD 4140.34M. In addition, this procedure is not applicable to subsistence, bulk petroleum, and medical drugs, as presently provided or later modified in that manual, or to such other items as may be added thereto. Interdepartmental purchases shall be accomplished in accordance with the provisions of Section V.

1-302.2 *Sources Outside the Government.* Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals or quotations" in the case of procurement by negotiation) shall be solicited (see Part 10, this Section) from all such qualified sources of supplies or services as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the Department concerned, and thereby to obtain for the Government the most advantageous contract—prices, quality, and other factors considered. Offers shall not knowingly be solicited on the basis of race, creed, color, sex, age, or national origin of prospective sources.

1-302.3 *Production and Research and Development Pools.*

(a) *Description.* A production or research and development pool is a group of concerns (i) who have associated together for the purpose of obtaining and performing jointly or in conjunction with each other, contracts for supplies or services, or for research and development, for Defense use (ii) who have entered into a pool agreement governing their organization, relationship, and procedure, and (iii) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool) or in accordance with sections 9(d) or 11 of the Small Business Act, Public Law 85-536 (Small Business Pools). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act. (See Section XII, Part 6.) Information on types of small business production pools, their purpose, and procedures for establishing such pools and for securing their approval by the Small Business Administration (SBA) is contained in the SBA publication "Small Business Production Pools for Defense."

(b) *General Rule.* Except as provided in this paragraph 1-302.3, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of Status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the SBA or Office of Emergency Planning (OEP) notification of approval of the pool. If the contracting officer has any question as to whether a given pool has been approved, he shall consult the regional office of the SBA. Each Department will expeditiously disseminate to contracting officers information received from SBA or OEP concerning the approval of pools.

(d) *Contracting With Pools.*

(1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of Pool Member.* When a member of a production pool has submitted a bid or proposal in its own name and not on behalf of a pool, the pool agreement shall be a factor to be[illegible]dered in determining its responsibility pursuant to Section I, Part 9.

(f) *Small Business Status*. Approval of an organization as a defense production or research and development pool under the Defense Production Act of 1950, as amended, does not confer upon such pool the preferences and privileges accorded to "small business concerns". Such preferences and privileges shall be accorded only to those pools which have been approved under the Small Business Act, P.L. 85-536, as amended.

1-302.4 *Foreign Purchases*. Foreign purchases shall be made in accordance with the provisions of Section VI and upon compliance with any other applicable provisions of this Regulation.

1-302.5 *Planned Producer*. A Planned Producer is an industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

1-302.6 *Contracts Between the Government and Its Employees or Business Organizations Substantially Owned or Controlled by Government Employees*.

(a) Contracts shall not knowingly be entered into between the Government and employees of the Government or business organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(b) When a contracting officer has reason to believe that an exception as described in (a) above should be made, approval of the Head of a Procuring Activity shall be obtained prior to entering into any such contract.

(c) Nothing in (a) above shall authorize a "Personal Services" contract in violation of 22-102.

1-302.7 *Commercial or Industrial-Type Activities (CITA)*. Normally the Government relies on the private sector for goods and services, while recognizing that certain functions are inherently governmental in nature and must be performed by Government personnel. Section IV, Part 12 establishes the policies and procedures used to determine whether needed commercial or industrial type work should be done by contract with private sources or in-house using Government facilities and personnel.

1-303 Exchange of Purchase Information.

(a) When the same item or class of items is being purchased by more than one Department, or by more than one procuring activity within a Department, the exchange and coordination of pertinent information, particularly cost and pricing data, between these Departments or procuring activities is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. Such exchange and coordination of information is particularly beneficial during the period of procurement planning, presolicitation, evaluation, and pre-award survey.

(b) When substantial purchases of major items are involved or when the purchasing activity deems it desirable, it shall request appropriate information (on both the end item and on major subcontracted components) from other purchasing activities responsible for buying similar items. Each activity receiving such requests shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

1-304 Procurement of Privately Developed Items.

1-304.1 *General.* It is Department of Defense policy:

(i) to make all procurements on a competitive basis to the maximum practicable extent, and

(ii) to provide an incentive to industry creativity by honoring the rights in data resulting from private development and by limiting the demands for such data to that which is essential for Government purposes.

It is important that the efforts directed toward increasing competition do not demand or use privately developed data in a manner which is contrary to the policies and procedures established in Section IX, Part 2. Accordingly, when the two policies stated above produce situations which require the contracting officer to decide whether to procure data for future competitive procurement, the provisions of Section IX, Part 2, as supplemented by this paragraph 1-304, shall govern.

1-304.2 *Specific Procurement Methods.*

(a) When Defense requirements are for items which are available from more than one source as a result of either licensing, competitive copying, or independent development, the contracting officer shall seek full and free competition for such items.

(b) When the Government desires to purchase privately developed items but does not have necessary data with unlimited rights for use in a specification for competitive procurement, the contracting officer shall use one of the following alternative procedures with preference in the order of this listing (see also 1-313).

(1) When practical, procurement shall be competitive using performance or other specifications, including purchase descriptions, which do not contain data developed at private expense to which the Government does not have unlimited rights. Procurement on this basis will normally not provide items of identical design. However, it frequently is not necessary that items of identical design be purchased. There are two methods of competitive procurement which may provide items of the same or of similar design and suitable performance. One of these is purchase by two-step formal advertising. The other is by the use of "brand name or equal" purchase descriptions. To encourage participation by technically oriented firms that are desirous of offering their privately developed products in competition with similar articles, procuring activities should consider incorporating a requirement in the IFB or RFP for a bid sample to be used for evaluation purposes only (see 1-1206.2 through 1-1206.4 and 2-202.4).

(2) When items of design or composition similar or identical to a privately developed item are required and it is determined that competitive procurement is not practicable, procurement should be on a noncompetitive basis from the firm which developed or designed the item or process or its licensees, *provided* productive capacity and quality are adequate and price is fair and reasonable.

(3) When additional sources are required for items of design or composition similar or identical to a privately developed item in order to meet total current or mobilization requirements, and the procedures in (1) above cannot practicably be used to create additional sources, the developer should be encouraged to license others to manufacture such items. Procuring activities should also consider the specific acquisition by the Government of the necessary rights in data. When complex technical equipment is involved and the establishment of satisfac-

tory additional sources will require, in addition to data, technical assistance from the primary source, consideration should be given to the use of the leader company procurement technique (see Section IV, Part 7).

(4) As a last alternative, a design specification may be developed by the Government through inspection and analysis of the product (*i.e.*, reverse engineering) and used for competitive procurement. Reverse engineering shall not be used unless significant cost savings can be reasonably demonstrated and the action is authorized by the Head of the Procuring Activity. In the case of the Air Force this authority may be delegated to the Commanders of the Air Force Systems Command Divisions and Centers and the Air Force Logistics Command Air Logistics Centers.

1-304.3 *Purchase of Patented Items When Government is a Licensee*. Award of a contract shall not be refused to a bidder/offeror merely because he is not the owner of or a licensee under any patent involved in the procurement. If, at the time a solicitation is issued, the Government is obligated to pay royalties applicable to the proposed procurement because of a pre-existing license agreement between the Government and a patent owner, the solicitation shall so state and shall: (i) identify the patents and specify the royalty rate; and (ii) advise that an amount equal to the royalty which the Government will be required to pay under the license agreement will be added as an evaluation factor to each bid/offer unless the bidder/offeror includes in his bid/offer a statement that he is the owner of or a licensee under the patents. (See 2-201(a)Sec.K(ix) and Sec.M(i); 2-201(b)(xvi) and (xxviii); 3-501(b)Sec.K(xvii) and Sec.M(x); and 3-501(c)(xliv).)

1-305 Time of Delivery or Performance.

1-305.1 *Scope*. This paragraph prescribes policy and procedure regarding requirements as to time of delivery or performance of contracts for supplies or services, excluding construction.

1-305.2 *General*.

(a) The time of delivery or performance is an essential element for inclusion in a contract and must be clearly set forth in invitations for bids and requests for proposals. Delivery and performance schedules shall be designed to meet the requirements of the particular procurement, with due regard to all relevant factors, and must be realistic. Delivery and performance schedules which are unreasonably tight or difficult of attainment are inimical to full competition, inconsistent with small business policies (see 1-702(b)(vi)), and may result in higher contract prices. Therefore, prior to issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery requirement which appears unrealistic, and, if necessary, initiate action to make appropriate adjustments, with due attention to relevant factors such as applicable transportation factors (see Section XIX) and those listed below:

(i) urgency of need for the supplies or services;
(ii) production time (quantity, complexity of design, etc.);
(iii) market conditions;
(iv) transportation time;
(v) industry practices;
(vi) capabilities of small business concerns;
(vii) time for obtaining and evaluating bids or offers, and awarding contracts;

(viii) time for contractors to comply with any conditions precedent to contract performance; and

(ix) time for the Government to perform its obligations under the contract (*e.g.*, furnishing Government property to the contractor, approval of preproduction samples, and inspection).

(b) When timely delivery or performance is unusually important to the Government, liquidated damages provisions may be used as provided in 1-310.

(c) Invitations for bids and requests for proposals shall, except where clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

1-305.3 *Terms.*

(a) Delivery schedules may be expressed in terms of—

(i) specific calendar dates (*e.g.*, on or before 68 Jul 01);

(ii) specified periods from date of contract (*i.e.*, date of award or acceptance by the Government, or date shown on contract document as effective date of contract); or

(iii) specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government).

The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. The clauses in 7-104.92 provide for extending the delivery schedule when notice of award is delayed.

(b) When the delivery schedule is based on the date of the contract (see (a)(ii) above and 7-104.92(b) and (c)), the contract, notice of award, acceptance of proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the day it is dated.

(c) When the delivery schedule is based on date of receipt by the contractor of notice of award (see (a)(iii) above), or when it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see 7-104.92(d)(ii)), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or shall be accompanied with a date of receipt acknowledgment card in accordance with Departmental procedures.

(d) When the *required* delivery schedule in the invitation for bids is based on date of the contract (see (a)(ii) above), a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (see (a)(iii) above)—

(i) shall be evaluated by adding five days normally required for delivery of the award through the ordinary mails; and

(ii) if the delivery date offered by the bid (computed in accordance with (i) above) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but

(iii) if award is made under (i) above, under the terms of the contract the delivery date will be the number of days, after *actual* receipt by the contractor of the notice of award, which were specified in the bid.

1-305.4 *Time of Delivery Clauses.*

Examples of time of delivery clauses for invitations for bids are set forth in 7-104.92.

1-305.5 *Research, Exploratory Development and Advanced Development.* Solicitations shall generally indicate either a desired term of performance or a completion date. In cases where development of a tangible item by a given date is urgent, solicitations shall indicate such urgency. Generally, solicitations to conduct research and exploratory development work will specify a level of effort for a term of performance. However, solicitations calling for a specific item in the category of such exploratory or advanced development will specify a completion date. A contractor may propose an alternate term of performance or completion date without disqualification of his proposal.

1-306 Approval Signatures. Approval signatures on contracts or purchase authorizations shall be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they shall, where possible, be obtained concurrently.

1-307 Priorities, Allocations, and Allotments.

1-307.1 *General.* In the interest of keeping current defense programs on schedule and maintaining an administrative means of promptly mobilizing the nation's economic resources in event of war or national emergency, it is a statutory requirement and national policy to require contractors to use industrial priority ratings and allotment authority to support military procurement, to the extent required by the Bureau of Domestic Commerce (BDC), of the Department of Commerce. For additional guidance on Industrial Preparedness Planning for national emergencies, see 1-2200.

(a) *DoD Priorities and Allocations Manual.* Department of Defense implementation of all rules and regulations published by the BDC for which the Department of Defense is delegated administrative responsibility will be published in the Priorities and Allocations Manual promulgated by Department of Defense Instruction 4400.1. Authorized deviations to the priorities and allocations rules and regulations will likewise be published in the Manual.

(b) *Operating Responsibility.* In accordance with 1-403, the Departments shall comply with the priorities and allocations program, including the Defense Priorities System (DPS) and the Defense Materials System (DMS) as set forth in the Priorities and Allocations Manual and in the rules and regulations published by the BDC.

1-307.2 *Required Use of Priorities, Allocations, and Allotments Clause.* The contract clause set forth in 7-104.18 shall be inserted in or attached to all ratable contracts except that no such clause need be attached to purchase orders of less than $2,500 which are not rated. Ratable contracts are those contracts for supplies which are required to be supported with rating and allotment authority (see Priorities and Allocations Manual, Section 2).

1-307.3 *Inadequate Response to Solicitations.*

(a) In accordance with the policies and procedures of the Priorities and Allocations System, rated contracts and purchase orders or Authorized Controlled Material Orders may be placed on selected suppliers when adequate response to a solicitation is not received. Therefore, when there are no bids or proposals received as a result of a solicitation or if the bids or proposals received do not cover the entire requirement, normal procurement procedures shall be followed in attempting to locate sources, to the extent exigencies of the procurement will permit. If such efforts are unsuccessful, and it is determined at this point in time that the procurement must be accomplished, then rated orders in the form of rated contracts, rated purchase orders or an Authorized Controlled Material Order shall be presented, to one or more (as appropriate) selected suppliers or manufacturers qualified to produce the item or material. This will be accomplished by a cover letter signed by the contracting officer, citing the requirements of the Defense Production Act and DPS Regulation 1, and requesting timely acceptance thereof by the contractor. The letter shall also request that any reasons for rejection be promptly furnished in writing, as required by the BDC Regulations. Rated orders will be placed pursuant to appropriate negotiation authority. Contracts and purchase orders shall contain, as a minimum, the following information in addition to normal contractual requirements to be a valid rated order:

(i) DO or DX rating on contracts or purchase orders as appropriate.
(ii) DMS allotment number or Authorized Controlled Material Orders.
(iii) Certification "Certified for National Defense Use Under DMS Reg 1 or DPS Reg 1 (as appropriate)."
(iv) Delivery schedule.
(v) Signature.

(b) Rated orders or Authorized Controlled Material Orders which are rejected by suppliers shall be forwarded to BDC, through established Departmental priorities assistance channels, for such action as BDC considers appropriate.

1-308 Documentation of Procurement Actions; Maintenance and Disposition of Contract Files.

(a) Each office performing purchasing, contract administration, or contract paying functions shall maintain official records of all actions with respect to solicitations and contracts in accordance with the provisions of this paragraph 1-308, except that the application of these provisions to small purchases and other simplified procurements covered by Section III, Part 6, is optional. The head of each such office shall be responsible for the establishment, currency, completeness, and review of this documentation, and for its final disposition, in accordance with Supplement 2 entitled "Contract File Maintenance, Closeout, and Disposition."

(b) The combination of official contract files listed in S2-101 shall contain documentation of all actions taken with respect to the contract, including final disposition, sufficient to constitute a full history of the transaction and permit ready reconstruction of all stages of the transaction, for the purpose of (i) providing a complete background to assure informed decisions at each step in the procurement, (ii) supporting actions taken by personnel in the procurement cycle, (iii) providing information for reviews and investigations conducted by the Department concerned, the Department of Defense, the General Accounting Office, or others, and (iv) furnishing essential facts in the event of litigation or Congressional inquiries.

1-309 Solicitations for Informational or Planning Purposes. It is the general policy of the Department of Defense to solicit bids, proposals or quotations only where there is a definite intention to award a contract or purchase order. However, in some cases solicitation for informational or planning purposes may be justified. Invitations for bids and requests for proposals will not be used for this

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purpose. Requests for quotations may be issued for informational or planning purposes only with prior approval of an individual at a level higher than the contracting officer. In such cases, the request for quotation shall clearly state its purpose and, in addition, the following statement in capital letters shall be placed on the face of the request: "THE GOVERNMENT DOES NOT INTEND TO AWARD A CONTRACT ON THE BASIS OF THIS REQUEST FOR QUOTATION, OR OTHERWISE PAY FOR THE INFORMATION SOLICITED." The foregoing does not prohibit the allowance, in accordance with 15-205.3, of the cost of preparing such quotations.

1-310 Liquidated Damages.

(a) This paragraph 1-310 applies to procurement by formal advertising and procurement by negotiation. Liquidated damages provisions may be used when both (i) the time of delivery or performance is such an important factor that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent, and (ii) the extent or amount of such damages would be difficult or impossible of ascertainment or proof. When a liquidated damages provision is to be used in a supply or service contract, insert the provision in 7-105.5 in accordance with the instructions thereof. Liquidated damage provisions for construction contracts are covered by 18-113, 7-603.39, and 8-709.

(b) When a liquidated damages clause is used, the contract shall set forth the amount which is to be assessed against the contractor for each calendar day of delay. The rate of assessment of liquidated damages must be reasonable considered in the light of procurement requirements on a case-by-case basis, since liquidated damages fixed without reference to probable actual damages may be held to be a penalty and therefore unenforceable. If appropriate to reflect the probable damages, considering that the Government can terminate for default or take other appropriate action, the rate of assessment of liquidated damages may be in two or more increments which provide a declining rate of assessment as the delinquency continues. The contract may also include an overall maximum dollar amount or period of time, or both, during which liquidated damages may be assessed, to assure that the result is not an unreasonable assessment of liquidated damages.

(c) The law imposes the duty upon a party injured by another to mitigate the damages which result from such wrongful action. Therefore, where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to terminate the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. For these reasons, particularly close administration over contracts containing liquidated damages provisions is imperative.

(d) Whenever any contract includes a provision for liquidated damages for delay the Comptroller General on the recommendation of the Secretary concerned is authorized and empowered to remit the whole or any part of such damages as in his discretion may be just and equitable. Accordingly, recommendations concerning such remissions may be transmitted to the Secretary concerned in accordance with Departmental procedures.

1–311 Buying In.

(a) "Buying in" refers to the practice of attempting to obtain a contract award by knowingly offering a price or cost estimate less than anticipated costs with the expectation of either (i) increasing the contract price or estimated cost during the period of performance through change orders or other means, or (ii) receiving future "follow-on" contracts at prices high enough to recover any losses on the original "buy-in" contract. Such a practice is not favored by the Department of Defense since its long-term effects may diminish competition and it may result in poor contract performance. Where there is reason to believe that "buying in" has occurred, contracting officers shall assure that amounts thereby excluded in the development of the original contract price are not recovered in the pricing of change orders or of follow-on procurements subject to cost analysis.

(b) To avoid or minimize the opportunity for "buying in" on a procurement which is likely to be succeeded by one or more "follow-on" procurements, the Government should obtain from the contractor a binding price commitment covering as much of the entire program concerned as is practicable. Such a commitment may be secured through employment of one of the following procurement techniques:

- (i) multi-year procurement, with a provision in the solicitation that a price may be submitted only for the total multi-year quantity (see 1–322.2); or
- (ii) priced options for additional quantities which together with the quantities being firmly contracted for, equal the anticipated total program requirements (see 1–1504).

(c) In addition to the use of the techniques noted in (b) above, it is important that other safeguards be provided against the contractor's recovering, through subsequent overpricing, from any initial loss situation due to "buying in." For example, see 3–813 with respect to the amortization of nonrecurring costs, and 3–801.2(c) concerning price quotations which the contracting officer considers unreasonable.

1–312 Voluntary Refunds.

(a) *General.* A voluntary refund is a payment or credit, not required by any contractual or other legal obligation, made to the Government by a contractor or subcontractor either as a payment or as an adjustment under one or more contracts or subcontracts. It may be unsolicited or it may be made in response to a request by the Government. Where it is desired to solicit a voluntary refund from a subcontractor, the prime contractor should be encouraged to facilitate the making of such refund. In deciding whether to solicit a voluntary refund or to accept an unsolicited refund, the contracting officer shall ask legal counsel to review the contract or contracts and all data relevant thereto to determine whether the Government's rights would be jeopardized or impaired by the contracting officer's proposed action.

(b) *Solicited Refunds.* Voluntary refunds may be requested during or after contract performance. They shall be requested only when it is considered that the Government was overcharged under a contract or was inadequately compensated for the use of Government-owned property, or in the disposition of contractor inventory, and retention by the contractor or subcontractor of the amount in question would be contrary to good conscience and equity. Generally, retention by the contractor or subcontractor shall not be considered contrary to good conscience and equity, and thus a voluntary refund shall not be requested, unless the overcharged or inadequate compensation was due, at least in part, to the fault of the contractor or subcontractor. The decision to solicit a voluntary refund shall be made by the Secretary concerned.

(c) *Disposition of Voluntary Refunds.*

(i) If a refund is offered prior to final payment, it is preferable that the contract price be appropriately modified to reflect the refund. In such a case, the amount of the refund shall be credited to the applicable appropriation cited in the contract.

(ii) In cases where the refund is to be made by check rather than by an adjustment in the contract price, the check shall be made payable to the office designated for contract administration and shall be forwarded immediately to the comptroller of the appropriate Department, or other Departmental officer responsible for the control of funds. When forwarded, the check shall be accompanied by a letter identifying it as a voluntary refund, giving the number of the contract or contracts involved and, where possible, giving the account number of the appropriation to which the refund should be credited.

1-313 Procurement of Parts.

(a) Any part, subassembly or component (hereinafter called "part") for military equipment, to be used for replenishment of stock, repair, or replacement, must be procured so as to assure the requisite safe, dependable, and effective operation of the equipment. (Items procured as spare parts are governed by the "DoD High Dollar Spare Parts Breakout Program" described in DoD Joint Regulation AR 715-22, NAVMATINST P4200.33, AFR 57-6, MCO P4200.13, DSAM 4105.2.) Where it is feasible to do so without impairing this assurance, parts should be procured on a competitive basis, as in the kind of cases described in (b) below. However, where this assurance can be had only if the parts are procured from the original manufacturer of the equipment or his supplier, the procurement should be restricted accordingly, as in the kind of cases described in (c) below.

(b) Parts that are fully identified and can be obtained from a number of known sources, and parts for which fully adequate manufacturing drawings and any other needed data are available with the right to use for procurement purposes (or can be made so available in keeping with the policies in Section IX, Part 2) are to be procured on a competitive basis. In general, such parts are of a standard design configuration. They include individual items that are susceptible of separate procurement, such as resistors, transformers, generators, spark plugs, electron tubes, or other parts having commercial equivalents.

(c) Parts not within the scope of (b) above generally should be procured (either directly or indirectly) only from sources that have satisfactorily manufactured or furnished such parts in the past, unless fully adequate data (including any necessary data developed at private expense), test results, and quality assurance procedures, are available with the right to use for procurement purposes (or can reasonably be made so available in keeping with the policies in Section IX Part

2) to assure the requisite reliability and interchangeability of the parts, and acquisition on a competitive basis would be consistent with the assurance described in (a) above. In assessing this assurance, the nature and function of the equipment for which the part is needed should be considered. Parts qualifying under this criteria are normally sole source or source controlled parts (see MILSTD 100) which exclusively provide the performance, installation and interchangeability characteristics required for specific critical applications. To illustrate, acceptable tolerances for a commercial television part may be far less stringent than those for a comparable military radar part, permitting competitive contracting for the former but not for the latter. The exacting performance requirements of specially designed military equipment may demand that parts be closely controlled and have proven capabilities of precise integration with the system in which they operate, to a degree that precludes the use of even apparently identical parts from new sources, since the functioning of the whole may depend on latent characteristics of each part which are not definitely known.

(d) When an award is made to a source that has not previously produced the item, the cognizant Government inspection activity and the appropriate contract administration office should be notified by the contracting office that the contractor will be producing the item for the first time.

1-314 Disputes and Appeals.

(a) *General.* The Contract Disputes Act of 1978 (Public Law 95-563, 41 U.S.C. 601-613) establishes procedures and requirements for asserting and resolving claims by or against contractors relating to a contract subject to the Act. In addition, the Act provides for the payment of interest on contractor claims, for the certification of contract claims in excess of $50,000, and a civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

(b) *Definition.*

(1) As used herein, "claim" means a written demand on one of the contracting parties seeking, as a matter of right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or related to the contract. However, a written demand by the contractor seeking the payment of money in excess of $50,000 is not a claim unless or until certified as required by (L) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim under Section 6(a) of the Act as provided in (h) below.

(c) *Government Policy on Settlement by Mutual Agreement.* It is the Government's policy, consistent with the Act, to try to resolve all contractual issues by mutual agreement at the contracting officer's level, without litigation. Implementation of this policy depends on an open mind with regard to such issues and the adequacy of the supporting information provided by both the contractor and the Government. In appropriate circumstances, before issuance of a contracting officer's decision on a claim, informal discussions between the parties, to the extent feasible, by individuals who have not participated substantially in the matter in dispute, can aid in the resolution of differences by mutual agreement and should be considered.

(d) *Contracting Officer Authority.* Except as provided in this paragraph (d), the contracting officer is authorized (within any specific limitations in his warrant) to decide or settle all claims relating to a contract subject to the Act. The authority of this paragraph (d) does not extend to (i) a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine; or (ii) any claim involving fraud. See (g) below.

(e) *Contracts Excepted From the Act.* A contract with a foreign government or agency thereof, or with an international organization or subsidiary body thereof, may be exempted from the Act and from DAR 1-314 if the Secretary determines that application of the Contract Disputes Act to the contract would not be in the public interest.

(f) *Mistakes Under the Contract Disputes Act.*

(1) Requests for relief under Public Law 85-804 are not considered to be claims within the Contract Disputes Act of 1978 or the Disputes clause, and shall continue to be processed under DAR Section XVII. However, certain kinds of relief formerly available only under Public Law 85-804, i.e., legal entitlement to rescission or reformation for mutual mistake, are now available within the authority of the contracting officer under the Act and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(2) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.). A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts.

Due to the complex legal issues likely to be associated with such allegations of legal entitlement, contracting officers shall make written decisions, which shall be prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(3) A claim that is either denied or not approved in its entirety under (2) above may be cognizable as a request for relief under Public Law 85-804 and DAR Section XVII. However, such a claim must first be submitted to the contracting officer for consideration under (2) above since such a claim is not cognizable under Public Law 85-804 and DAR Section XVII unless other legal authority in the Department concerned is determined to be lacking or inadequate.

(g) *Referral of Suspected Fraudulent Claims.* If a contractor is unable to support any part of its claim and there is evidence that such inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the designated Department or official responsible for investigating fraud, as listed in 1-600(b).

(h) *Initiation of a Claim.* Contractor claims shall be made in writing and submitted to the contracting officer for a decision. Claims by the Government against a contractor shall be the subject of a contracting officer decision.

(i) *Contracting Officer's Decision.*

(1) When a claim by or against a contractor cannot be satisfied or settled by agreement and a decision on the claim is necessary, the contracting officer shall:

(i) review the facts pertinent to the claim;

(ii) secure assistance from legal and other advisors; and

(iii) coordinate with the contract administration office or contracting office, when appropriate.

(2) The contracting officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, and shall include in the decision:

(i) a paragraph substantially as follows:

> This is the final decision of the Contracting Officer. This decision may be appealed to the Board of Contract Appeals.
>
> If you decide to make such an appeal, you must mail or otherwise furnish written notice thereof to the Board of Contract Appeals within 90 days from the date you receive this decision.

A copy thereof shall be furnished to the Contracting Officer from whose decision the appeal is taken. The notice shall indicate that an appeal is intended, shall reference this decision, and identify the contract by number. For appeals under the Disputes clause you may, solely at your election, proceed under the Board of Contract Appeals small claims procedure for claims $10,000 or less or their accelerated procedure for claims $50,000 or less. In lieu of appealing to the cognizant Board of Contract Appeals, you may bring an action directly in the U.S. Court of Claims* within 12 months of the date you receive this decision.

*Except as provided in Section 4 of the Act (Maritime Contracts)

(ii) a description of the claim or dispute;
(iii) a reference to pertinent contract provisions;
(iv) a statement of the factual areas of agreement or disagreement; and
(v) a statement of the contracting officer's decision, with supporting rationale.

(3) The contracting officer shall issue the decision within the following statutory time limitation:

(i) for claims not exceeding $50,000: If requested by the contractor, 60 days after receipt of the written request. If no contractor request is received by the contracting officer, the decision shall be rendered in a reasonable time.
(ii) for claims exceeding $50,000: Sixty days after receipt of a certified claim; *Provided, however,* That if a decision is not issued within 60 days the contracting officer shall notify the contractor of the time within which he will make the decision.
(iii) the reasonableness of these time periods will depend on the size and complexity of the claims and the adequacy of the contractor's supporting data and any other relevant factors.

(4) The amount determined payable pursuant to the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

(j) *Payment of Interest on Contractor's Claim.* The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date the contracting officer receives the claim (properly certified, if required, in accordance with (L) below), or from the date payment otherwise would be due, if such date is later, until the date payment is made, at the rate or rates fixed by the Secretary of the Treasury pursuant to the Renegotiation Act, Public Law 92-41.

(k) *Disputes Clause.*

(1) The Act applies to all disputes with respect to contracting officer decisions on matters "arising under" or "relating to" a contract. Agency Boards of Contract Appeals (BCA) created under the Act have the same powers of relief as the Court of Claims with respect to a claim that is subject to the Act. Thus, the statutory agency BCAs continue to have all of the authority they possessed before the Act with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The Disputes clause set forth in 7-103.12 recognizes the all disputes authority established by the Act and states certain requirements and limitations of the Act for the guidance of contractors and contracting agencies. It is not intended to affect the rights and obligations of the parties as provided by the Act nor to constrain the authority of the statutory agency BCAs in the handling and deciding of contractor appeals pursuant to the Act.

(2) In general, prior to passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, Section 6(b) of the Act authorizes contracting agencies to include a provision requiring a contractor to continue performance of a contract in accordance with the contracting officer's decision pending final decision on a claim relating to the contract. In unusual circumstances the performance of some contracts may be so vital to the national security or to the public health and welfare that performance must be guaranteed even in the event of a dispute that may be characterized as a claim relating to, as opposed to arising under, the contract. In recognition of this fact, an alternative provision is provided for paragraph (h) of the Disputes clause at 7-103.12(b).

(3) The acquisitions of aircraft, naval vessels, missiles, tracked combat vehicles, and related electronic systems shall include the alternate provision at 7-103.12(b). In addition, the alternate provision at 7-103.12(b) may also be used in those contracts or classes of contracts where it has been determined, in accordance with Department procedures, that it is essential because of the unusual circumstances

described in (k)(2) above. The determination to use the alternate provision at 7-103.12(b) in other situations shall be made by the head of the contracting activity responsible for the acquisition involved. Examples of the types of unusual circumstance where continued performance may be determined to be vital to the national security or public health and welfare include the acquisition of weapons, support systems, and related components other than those listed above, or other essential supplies or services whose timely reprocurement from other sources would be impracticable. In all contracts employing the alternate provision at 7-103.12(b), in the event of a dispute not arising under but relating to the contract, agencies should consider providing, through appropriate departmental procedures, financing of the continued performance, *Provided*, That the Government's interests are properly secured.

(L) *Certification of Contractor Claims Over $50,000.*

(1) Section 6(c)(1) of the Act requires that a contractor claim over $50,000 shall be certified at the time of submission that it is made in good faith; that the supporting data are accurate and complete to the best of the contractor's knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.

(2) The certification shall be executed by the contractor if an individual. When the contractor is not an individual, the certification shall be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(3) In determining when the dollar thresholds requiring claim certification are met, the aggregate amount of both the increased and decreased costs shall be used. (See examples at 3-807.3(b)(ii).)

1-315 Capital Investment by Contractors. It is DoD policy to encourage contractor capital investment for efficient capability in the research, development and/or production of weapon systems and material. Techniques to support this policy and incentivize contractor capital investment include the DoD profit policy (3-808.2), multi-year procurement (1-332), award fee contracts (3-405.5), and special capital investment incentive provisions (3-815).

1-316 Disclosure of Contractor Performance Data to Other Government Agencies and Foreign Governments. Subject to any applicable security requirements, the Departments shall honor the requests of other Government agencies for readily available information relating to the performance of their prime contractors. The agency requesting the information shall be advised that it will be responsible for any further release of such information. A request from a foreign government for such information should similarly be honored. However, if there is any question as to propriety of divulging the information for any reason, including the security aspect, the reply should be forwarded through appropriate Departmental channels.

1-317 Rental in Lieu of Purchase. There are situations in which the Government's equipment requirements may be more economically filled by rental than by purchase. This is particularly true in the case of certain expensive commercial equipments. The decision to rent rather than purchase must be made on a case-by-case basis, and rental should be used where it is in the Government's interest. The criteria to be considered in each case include the following:

(i) the Government requirement is of short duration, and purchase would be costlier than rental (generally, long-term rentals should be avoided in the absence of compelling circumstances);

(ii) the probability that the equipment will become obsolete and that replacement within a short period will be necessary;

(iii) the equipment is special or technical, and the lessor will provide the equipment, as well as maintenance and repair services, at a lower cost than would otherwise be available to the Government.

1-318 Contracts Conditioned Upon the Availability of Funds.

(a) *Fiscal Year Contracts*. To effect procurements promptly upon the beginning of a new fiscal year, it may at times be necessary to initiate a procurement properly chargeable to funds of the new fiscal year prior to the availability of such funds. In such instances, the clause in 7-104.91(a) shall be included in the contract. This authority shall be used only for operation and maintenance and continuing services (such as rentals, utilities, and items of supply which are not financed by stock funds) which are necessary for normal operation and for which the Congress consistently appropriates funds.

(b) *Contracts Crossing Fiscal Years*. A one-year requirements or indefinite quantity contract for services funded by annual appropriations may extend beyond the end of the fiscal year current at the beginning of the contract term provided that any specified minimum quantities are certain to be ordered in the fiscal year current at the beginning of the contract term (see 22-107). In this case, the clause in 7-104.91(b) shall be included in the contract. Also, a contract for expert or consultant services entered into in accordance with 22-204.2 and calling for an end product which cannot feasibly be subdivided for separate performance in each fiscal year may cross fiscal years.

(c) *Acceptance of Supplies or Services*. When either of the Availability of Funds clauses is used, the supplies or services shall not be accepted by the Government until funds are available to the contracting officer for the procurement and until the contracting officer has given notice to the contractor (to be confirmed in writing) of such availability. Records will be maintained to insure adequate administrative control of funds.

1-319 Reserved.

[The next page is 1:37.]

1-320 Industry Security. Procedures required to safeguard classified defense information which U.S. contractors, subcontractors, vendors, or suppliers will possess or have access to, are set forth in the Department of Defense Industrial Security Regulation (DoD 5220.22-R), hereinafter referred to as the ISR, and its companion publication, the Department of Defense Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22-M), hereinafter referred to as the ISM, together with supplements and revisions thereto. Procedures for the protection of information covered by foreign classified contracts awarded to U.S. industry and instructions for the protection of U.S. classified information in connection with classified contracts awarded to foreign firms are explained in Section VIII, ISR (also see 9-106).

1-321 Procurements Involving Work To Be Performed in Foreign Countries by United States Contractors.

(a) When a contract which requires work to be performed in a foreign country by personnel of a United States or third country national contractor, is contemplated by a purchasing activity not within the command jurisdiction of the unified or specified commander involved, coordination shall be effected with the appropriate senior component commander in the country involved. In the event there is no such component command in the country, or the procurement does not pertain to a component command, this action shall be effected through either the unified commander, the unified command representative, or the designated commanding officer of the unified command for that country. Such coordination shall be effected as early as possible, preferably prior to the issuance of the solicitation, but in any event prior to award of a contract. When such coordination is initiated prior to, or at the time of solicitation, the notification should include a copy of the solicitation, and as much of the information listed in (c) as is then available.

(b) The contracting officer shall request the following information from the overseas Commander:

(i) the applicability of any international agreements to the requirement being procured;
(ii) security requirements applicable to the area concerned;
(iii) standards of conduct required to be observed by the prospective contractor and his employees, and any action that may be taken against them in the event required standards are not maintained; and
(iv) requirements pertaining to the use of foreign currencies, including applicability of United States holdings of excess foreign currencies.

(c) The contracting officer shall furnish the overseas Commander the following information prior to any contract performance:

(i) any contractor logistical support desired,
(ii) contract performance period and estimated contract value,
(iii) number and nationality of contractor employees and date of planned arrival of contractor personnel,
(iv) contract security requirements, and
(v) other pertinent information to effect complete coordination and cooperation.

(d) The contract file shall be documented as indicated in 6-903.

(e) In accordance with 11-403.1(b), the contracting officer shall, at the time of negotiation of a contract that is to be performed in a country or area listed in Q-301 (*Appendix Q*), obtain from the appropriate Designated Commanding Officer detailed information concerning the taxes and duties from which the Government of the United States is exempt under the provisions of applicable international agreements or foreign law.

1-322 Multiyear Contracting.

1-322.1 General.

(a) Description of Procedure: Multiyear contracting is a method of acquiring for DoD planned requirements for up to a 5-year period (4 years in the case of maintenance and operation of family housing), without having total funds available at time of award. Multiyear contract quantities are budgeted for and financed in accordance with the applicable program year as reflected in the DoD Five-Year Defense Program. This method may be used for either competitive or noncompetitive contracting. With respect to competitive contracting, award may be based on price only or price and other factors considered. (See 1-322.4(a)(2)). The contractor is protected against loss resulting from cancellation by contract provisions allowing reimbursement of unrecovered nonrecurring costs included in prices for canceled items. However, the cancellation ceiling for any contract may not be in excess of $5 million unless the Congress, in advance, approves such a cancellation ceiling.

(b) Policy. Contracts awarded under this multiyear procedure shall be firm fixed price or fixed price with provisions for economic price adjustment. Use of multiyear contracting is encouraged to take advantage of one or more of the following:

(i) lower costs;
(ii) enhancement of standardization;
(iii) reduction of administrative burden in the placement and administration of contracts;
(iv) substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs;
(v) stabilization of work forces;
(vi) avoidance of the need for establishing and "proving out" quality control techniques and procedures for a new contract each year;
(vii) broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs; and
(viii) implementation of the Industrial Preparedness Program for planned items with planned producers.

(c) Use.

(1) The multiyear contracting method should be used

when it is determined that:

(i) the Government need for the supplies or services being acquired over the period of the contract is reasonably firm and continuing; and

(ii) such a contract will serve the best interests of the Government by encouraging effective competition or promoting economies in performance and operation.

(2) Prior to use of the multiyear method in the case of noncompetitive contracting, the head of the contracting activity or his designee must determine that (i) changes to an extent that would have a major impact on contract price, e.g., design and specification changes or changes in production methods, are not expected to occur, and (ii) the item is expected to be obtainable only from a sole source during the entire multiyear period.

(3) Prior to the use of the multiyear contracting method in the case of items regularly manufactured and offered for sale in substantial quantities in the commercial market, the head of the contracting activity or his designee must determine that the criteria in (c)(1) are met, significant benefits or cost savings would result, and either (A) the quantities to be acquired by the Government represent a substantial portion of the total market and would require special manufacturing runs for all or substantially all of the Government's requirements, or (B) the items to be acquired require repair parts support and are not susceptible to significant changes on a periodic basis.

(d) Limitations. Multiyear contracts for supplies and services shall not be used:

(1) When funds covering the acquisition are limited by statute for obligation during the fiscal year in which the contract is executed (but see 1-322.6, Multiyear Contracting of Services under Public Law 90-378, for multiyear contracting of specified service outside the 48 contiguous States and District of Columbia; and 1-322.7, for multiyear contracting of supplies and services for the maintenance and operation of familty housing under Public Law 91-142).

(2) To obtain requirements which are in excess of the Five-Year Defense Program.

(3) In the case of services, until a written determination has been made that (i) there will be a continuing requirement for the services and incidental supplies, consonant with current plans for the proposed contract period; (ii) the furnishing of such services and incidental supplies will

require a substantial initial investment in plant or equipment and the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force, or other substantial startup costs; and (iii) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economics of operation.

(4) In the case of services, until the determination required by (3) above has been executed by—

(i) the chief of the contracting office when the contract period will not exceed 2 years and the estimated annual expenditures thereunder do not exceed $350,000;

(ii) the head of the contracting activity or his designee (not below the chief of the contracting office) when the contract period will exceed 2 years, including any options (except see (iii) below for multiyear contracting of services under Public Law 90-378) or when the contract period will not exceed 2 years, but the estimated annual contract expenditure will exceed $350,000;

(iii) the Assistant Secretary responsible for acquisition in the respective Department, or the Directors of Defense Agencies for multiyear contracting of services performed outside the 48 contiguous States and the District of Columbia under Public Law 90-378 when the contract period will exceed 3 years, including any option, regardless of dollar value.

(e) Set-Asides. Total small business set-asides are compatible with the multiyear method of contracting. Partial set-aside procedures (both small business and labor surplus area) are generally not compatible with the multiyear procedure when high startup costs are involved (potential duplication of such costs by the set-aside contractor and the non-set-aside contractor is not offset by broader and more realistic competition). Partial set-asides are compatible when the opportunity for cost savings is based on assurance of continuity of production over longer periods of time. When considering use of this procedure, the contracting officer shall request the activity's small business specialist and the SBA representative, if one is assigned to that activity, to review all pertinent facts and make recommendations thereon.

(f) Multiyear Subcontracts. The same benefits and advantages that are derived from multiyear prime contracts may frequently be increased by multiyear subcontracts thereunder. The prime contractor in the exercise of his management responsibilities must freely choose the subcontract types that best satisfy his needs. However, multiyear prime contractors should be encouraged to employ multiyear subcontracts selectively when—

(i) the subcontract item or service is of stable design and specification;
(ii) the quantity required is reasonably firm and continuing;
(iii) effective competition is assured; and
(iv) the use of multiyear subcontracts can reasonably be expected to result in reduced prices.

In such cases, the prime contractor is adequately protected against cancellation since appropriate cancellation charges for such multiyear subcontracts are included within the cancellation charge of the multiyear prime contract. Multiyear subcontracts may be particularly desirable under a sole source multiyear prime contract since effective competition at the subcontract level may thereby be enhanced and the attendant cost reductions realized by the prime contractor and the Government.

(g) Use of Options.

(1) Options may be used when some future requirements are definite and additional quantities of supplies or services are likely, though not definitive as to amount.

(2) Options to increase quantities or options to renew the contract for a reasonable period shall be priced not to include (i) charges for plant and equipment already amortized or (ii) any other nonrecurring charges that were included in and already recovered under the basic contract price. Any such option provision shall not exceed the period described in 1-1502(d).

1-322.2 Procedures for Supply and Service Contracts.

(a) Where competition is anticipated, solicitations shall include:

(1) A statement of the requirements, separately identified for—

(i) the first program year; and
(ii) the multiyear contract including the requirements for each program year thereunder.

(2) When a first program year "buy-in" is not anticipated—

(i) provisions that (A) a price must be submitted for the total requirements of the first program year, (B) a price may be submitted for the total multiyear requirements, and (C) a bid or offer on the multiyear requirements only will be considered nonresponsive; and

(ii) a provision that if only one responsive bid or offer on the multiyear requirements is received from a responsible bidder or offeror, the Government reserves the right to disregard the bid or offer on the multiyear requirements and to make an award only for the first program year requirements.

(3) When competition in future acquisitions would be impractical after award of a contract covering the first program year requirements only, and it is determined that, in order to eliminate the possibility of a first program year "buy-in", the following provisions will be in the best interest of the Government—

(i) provisions that a price may be submitted only for the total multiyear requirements and that prices on a single year basis will not be considered for the purpose; and

(ii) a provision that if only one responsive bid or offer on the multiyear requirements is received from a responsible bidder or offeror, the Government reserves the right to cancel the solicitation and resolicit on a single year basis by whatever procedures are than appropriate.

(4) A provision that the unit price of each item in the multiyear requirements shall be the same for all program years included therein.

(5) Criteria for comparing the lowest evaluated submission on the first program year's requirement against the lowest evaluated submission on the multiyear requirements.

(6) Criteria for evaluation factors other than price where the acquisition is on the basis of price and other factors.

(7) When the solicitation requires offers on the first program year requirements and permits offers on the multiyear requirements, a provision that in the event the Government determines prior to award that only the first program year quantities are actually required, the Government may evaluate offers and make award solely on the basis of

price offered on the first program year requirements. In such an event, prices offered on a multiyear basis shall not be considered.

(8) A provision setting forth a separate cancellation ceiling (on a percentage basis) and dates applicable to each program year subject to cancellation (see (c) below).

(9) A prominently placed provision directing attention to the multiyear features of the solicitation, and to—

(i) the applicable Limitation of Price and Contractor Obligations clause (see 7-104.47(a) or 7-1903.33(c)), which limits the payment obligation of the Government to the requirements of the first program year and to those of such succeeding program years as may be funded by the Government;

(ii) the applicable Cancellation of Items Clause (see 7-104.47(b), 7-1903.33(b), or 7-1903.33(d)), which allows the Government to cancel, by a specified date or within a specified period, all remaining program years; and

(iii) the cancellation ceiling set forth in the schedule.

(10) A statement in the solicitation schedule that award will not be made on less than the stated first program year requirements.

(b) Where a noncompetitive acquisition is involved, solicitations shall include:

(1) A statement of the requirements for the multiyear contracting, including the requirements for each program year thereunder.

(2) A provision that the unit price of each item in the multiyear requirement shall be the same for all program years included therein;

(3) A provision setting forth a separate cancellation ceiling (on a percentage basis) and dates applicable to each program year subject to cancellation (see (C) below).

(4) A prominently placed provision directing attention to the multiyear features of the solicitation; and to—

(i) the applicable Limitation of Price and Contractor Obligations clause (see 7-104.47(a) or 7-1903.33(c)), which limits the payment obligation of the Government to the requirements of the first program year and to those of such succeeding program

years as may be funded by the Government;
(ii) the applicable Cancellation of Items clause (see 7-104.47(b), 7-1903.33(b), or 7-1903.33(d)), which allows the Government to cancel by a specified date or within a specified period, all remaining program years; and
(iii) the Cancellation ceiling set forth in the schedule.

(c) The term "cancellation" as used in multiyear contracting, except as otherwise provided for modified requirements contracts in 1-322.8(c)(9)(iv), refers only to the cancellation of the total requirements of all remaining program years. Such cancellation results from:

(1) Notification from the contracting officer to the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(2) Failure of the contracting officer to notify the contractor that funds have been made available for performance of the succeeding program year requirement. For each program year except the first, the contracting officer shall establish a cancellation ceiling applicable to the requirements of the remaining program years which are subject to cancellation. Such ceilings shall be expressed in the schedule and shall apply alike to all bidders or offerors. The cancellation ceiling percentage for each program year shall be in direct proportion to the total requirements at the beginning of that year and all remaining years subject to cancellation. For example, consider that the total nonrecurring costs are estimated at 10 percent of the total multiyear price and the total multiyear requirements for 5 years are 30 percent in the first year, 30 percent in the second, 20 percent in the third, 10 percent in the fourth, and 10 percent in the fifth. Cancellation percentages would be 7, 4, 2, and 1 percent of the total multiyear price applicable at the beginning of the second, third, fourth, and fifth program years, respectively. In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime or subcontractor, which would be applicable to, and which normally would be amortized over, all items or services to be furnished under the multiyear requirements. They include such costs as the following, where applicable: plant or equipment relocation or rearrangement; special tooling and special test equipment; preproduction engineering; initial rework; initial spoilage;

pilot runs; allocable portions of the costs of facilities to be acquired or established for the conduct of the work; costs incurred for the assembly training and transportation of a specialized work force to and from the job site; and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage figure. Cancellation dates for each program year's requirements shall be established as appropriate.

(d) Original cancellation ceilings and dates may be revised after issuance of a solicitation if it is found that such ceilings and dates are not realistic. In the case of formal advertising, such changes shall be by amendment of the invitation for bids prior to bid opening. In two-step formal advertising, discussion conducted during the first step may indicate the need for revised ceilings and dates (which may be incorporated) in step two. In a negotiated acquisition, negotiations may provide information which requires a change in cancellation ceilings and dates (see 3-805.4).

(e) In order to assure that all interested sources of supply are thoroughly aware of how multiyear contracting is accomplished, use of presolicitation or prebid conferences may be advisable.

(f) Price Adjustment/Economic Price Adjustment Clauses. In the case of supplies, the contracting officer should ascertain whether economic price adjustment provisions are appropriate in light of 3-404.3. When the Service Contract Act of 1965 clause is included in a contract (see 7-1903.41(a)), the appropriate price adjustment clause in 7-1905 shall be used. The latter clause may be modified in overseas contracts to allow for economic price adjustment when laws, regulations, or international agreements require contractors to pay higher wage rates. In cases when potential fluctuations in labor or material costs are such that contingencies therefor are not provided for in 7-1905 and are likely otherwise to be included in the multiyear contract price, the contracting officer may use a provision for economic price adjustment authorized by 3-404.3(c).

(g) For each program year requirement, funds shall be obligated to cover the full quantities to be delivered thereunder. There is presently no requirement to fund cancellation charges.

(h) In the event of a cancellation, the contractor is entitled to payment as consideration therefor in accordance with the terms of the applicable Cancellation of Items clause (see 1-322.5) in an amount not to exceed the cancellation ceiling.

(i) The schedule shall contain a provision limiting the payment obligation of the Government to a monetary amount, there described as being available for contract performance. Such amount for the first program year requirements shall be inserted by the contracting officer upon award of the contract and shall be modified for successive program years upon availability of funds for those years.

(j) In the event the contract is terminated in whole for the convenience of the Government, including items subject to cancellation, the Government's obligation shall not exceed the amount set forth in the schedule as available for contract performance, plus the applicable amount established as the cancellation ceiling.

1-322.3 Evaluation.

(a) Evaluation of offers in a multiyear acquisition involves not only determination of the lowest overall evaluated cost to the Government for both alternatives, the multiyear acquisition and the first program year acquisition; it also involves the comparison of the cost of buying the total requirement in successive independent acquisitions. All the factors to be considered for the various evaluations involved shall be set forth in the solicitation.

(b) In the event the Government determines prior to award that only the first program year quantities are actually required, only the offers on the first program year requirements will be evaluated. When the solicitation does not permit the submission of prices on a single year basis, the single year requirement will be resolicited.

(c) The cancellation ceiling shall not be a factor for evaluation. Unless Government administrative costs incident to annual contracting methods and contract administration can be reasonably established and supported, they shall not be used as a factor for evaluation. When administrative costs are to be used in evaluation, the dollar amount to be used shall be stated in the solicitation.

(d) In the case of supplies, delivery destinations may be unknown for certain quantities due to the extended duration of contract performance. Such cases shall be handled in accordance with 19-208.4.

(e) When Government production and research property is provided pursuant to Section XIII, Part 3, the use of such property may be on a rent-free basis under the policies contained in Section XIII, Part 5. In this event, the solicitation shall set forth a detailed description of the procedure to be followed and the factors to be considered, in accordance with Section XIII, Part 5, for the elimination of comeptitive advantage. The amount added for evaluation to each offeror's unit price for the first program year requirement shall also be added to his unit price for the multiyear requirements.

(f) When the solicitation requires the submission of prices on the first program year requirements in accordance with 1-322.2(a)(2)(i), bids or offers which submit prices on the multiyear requirements only shall be rejected as nonresponsive.

(g) When the solicitation provides for submission of prices only for the total multiyear quantity in accordance with 1-322.2(a)(3)(i), submission of prices for a single year quantity will be disregarded for any purpose but will not render the bid or offer nonresponsive as to any alternate multiyear submission by the same bidder or offeror.

(h) To determine the lowest evaluated unit price, compare the lowest evaluated bid or offer on the first program year alternative against the lowest evaluated bid or offer on the multiyear alternative, as follows:

(1) Multiply the evaluated unit price for each item of the lowest evaluated bid or offer on the first program year alternative times the total number of units of that item required by the multiyear alternative. Then,

(2) Take the sum of these products, for all the items, plus the dollar amount of any administrative costs of the Government that are to be used in the evaluation. Finally,

(3) Compare this result against the total evaluated price of the lowest bid or offer on the multiyear alternative.

(i) Where the multiyear acquisition is being competed on a basis other than price alone, the solicitation shall advise of the relative importance of the evaluation factors.

1-322.4 Award.

(a) Except as provided in (b) and (c) below, award shall be made:

(1) On the basis of the lowest evaluated unit price determined in accordance with 1-322.3, whether that price is on a single year basis or a multiyear basis; or

(2) To that offeror submitting the proposal most advantageous to the Government, price and other evaluation factors considered where the acquisition is on the basis of price and other factors.

(b) If, when competition was anticipated, only one responsive bid or offer is received on the multiyear requirements from a responsible bidder or offeror, award shall be made only with the advance approval of the chief of the contracting office.

(c) In no event shall award be made at an unreasonable price (see 2-401.4 and 3-801).

(d) In the case of noncompetitive acquisitions, awards shall be made only if a detailed review of the cost and technical proposals supports the determination made under 1-322.1(c)(ii), and significant benefits or cost savings will result from multiyear acquisition.

1-322.5 Clauses. The clauses in 7-104.47 (a) and (b) shall be included in all supply contracts under the multiyear contracting method and the clauses in 7-1903.33(a) and (b) shall be included in all contracts for the contracting of services under the multiyear contracting method, except as provided in 1-322.6 and 1-322.7.

1-322.6 Multiyear Contracting of Services Under Public Law 90-378.

(a) Under Public Law 90-378 (10 U.S.C. 2306(g)), the Department of Defense is authorized to enter into multiyear acquisitions for the following listed services, to be performed outside the 48 contiguous States and the District of Columbia, to obtain requirements which are not in excess of the Five-Year Defense Program and for which funds are limited by statute for obligation during the fiscal year in which the contract is executed:

(i) operation, maintenance, and support of facilities and installations;
(ii) maintenance or modification of aircraft, ships, vehicles, and other highly complex military equipment;
(iii) specialized training necessitating high quality instructor skills (for example, pilot and other aircrew members; foreign language training); and
(iv) base services (for example, ground maintenance; in-plane refueling; bus transportation; refuse collection and disposal).

However, such acquisitions shall be entered into for no more than a 5-year period and only when such acquisitions are consistant with the policies of and satisfy the requirements set forth in 1-322.1 through 1-322.5 (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October - 30 September).

(b) Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 shall be considered to mean "fiscal year."

(c) Clauses. The clauses in 7-1903.33(c) and (d) shall be included in all service contracts for the acquisition of services under this paragraph 1-322.6 on a multiyear basis.

1-322.7 Multiyear Acquisition of Supplies and Services Under Public Law 91-142.

(a) General. Under Section 512 of Public Law 91-142, the Department of Defense is authorized to enter into contracts for periods of no more than 4 years for supplies and services required for the maintenance and operation of family housing for which funds would otherwise be available only within the fiscal year for which appropriated. Such acquisitions shall be entered into only when they are consistent with the policies and satisfy the requirements set forth in 1-322.1 through 1-322.5 (except as provided in (b) and (c) below). The performance years specified in the schedule shall not extend beyond the end of any fiscal year (1 October - 30 September).

(b) Limitations. Since acquisitions under this authority are limited for execution on a fiscal year basis, references to "program year" throughout 1-322.6 shall be considered to mean "fiscal year."

(c) Clauses. The clauses in 7-1903.33(c) and (d) shall be included in all contracts for the acquisition of supplies or services under this paragraph 1-322.7 on a multiyear basis.

1-322.8 Multiyear Acquisition Using Modified Requirements-Type Contracts.

(a) Description of Procedure. Competitive multiyear acquisition of supplies and/or services may be conducted using a requirements-type contract, modified from the 3-409.2 type as described below. This type of contract will only be used when anticipated annual requirements, expressed as the Best Estimated Quantity (BEQ), can be projected with reasonable certainty. Under this method, a firm fixed price or fixed price with provisions for economic price adjustment contract is awarded for specified supplies and/or services up to a designated maximum quantity with orders places on an as-required basis during the multiyear period. Contracts awarded on the first program year requirements only will not include provision for cancellation charges. The modified requirements-type contract differs from the 3-409.2 requirements-type contract in the following respects:

(1) Contract quantities anticipated to be acquired

are set forth in the contract as the BEQ.

(2) Nonrecurring costs are to be amortized on the BEQ.

(3) The contractor is entitled to reimbursement for preproduction and other nonrecurring costs in accordance with the contract schedule cancellation ceiling in the event that the Government orders lesser quantities than the aggregate BEQ, or cancels program year requirements by cancellation notice.

(4) Quantities in excess of the aggregate BEQ and up to the maximum quantity set forth in the schedule will be priced exclusive of the nonrecurring costs amortized on the BEQ.

(b) Use. Multiyear acquisition using modified requirements-type contracts shall not be used unless (i) the requirement can be projected with reasonable certainty; and (ii) the requirements meet the general criteria for multiyear acquisition. (See 1-322.1(b) and (c).)

(c) Solicitation Procedures. Solicitation procedures shall be in conformance with 1-322.2 except that the term "requirements" as used in 1-322.2 will be deemed to mean BEQ. The solicitation shall include:

(1) A BEQ and a maximum quantity for each item for both the first program year and for each subsequent program year. The maximum quantity for individual program years is not separately priced.

(2) A line item, essentially as follows, to apply to quantities exceeding the aggregate multiyear BEQ:

> "The price established for this line item is applicable to all units ordered in excess of the aggregate BEQ of . . . and up to the total multiyear contract maximum quantity of . . . ."

(3) Solicitation schedule notes, essentially as follows:

> (i) "NOTE 1: Offeror will submit a single unit price for the single year requirement, which shall apply to all quantities up to the single year maximum in the event that a 1-year requirements contract is awarded for the single year requirement only. If a contract is awarded on the first program year requirements only, such a contract will not provide for any cancellation charges."
>
> (ii) "NOTE 2: Offeror will submit a single unit price, inclusive of nonrecurring

costs, to be entered on the schedule as the BEQ price for each program year, applicable to quantities within and up to the aggregate BEQ, under multiyear procedures."

(iii) "NOTE 3: Offerors will also submit a single unit price, exclusive of nonrecurring costs amortized over the BEQ, applicable only to quantities ordered in excess of the aggregate BEQ and up to the total multiyear contract maximum quantity."

(4) A provision that quantities ordered in excess of the program year BEQ but which do not exceed the aggregate BEQ will be priced inclusive of nonrecurring costs.

(5) A provision that evaluation will be on the basis of the lowest unit price offered for the first program year BEQ against the lowest unit price offered for the aggregate BEQ.

(6) A provision setting forth a single cancellation ceiling, applicable only in the event of contract award on the multiyear basis.

(7) A notification that the amount of cancellation charges payable shall be determined on the basis of the ratio between the total quantity ordered at the time of cancellation and the aggregate contract BEQ.

(8) A date or specific time period for Government notification to the contractor as to the availability or nonavailability of funds and any anticipated significant changes in the BEQ for the succeeding program year.

(9) The following clauses shall be included under the multiyear requirements method:

(i) Ordering. Insert the clause at 7-1101.

(ii) Delivery Order Limitations. Insert the clause at 7-1102.2(a).

(iii) Requirements. Insert the clause at 7-1102.2(b)(5).

(iv) Cancellation of Items. Insert the clause at 7-104.47(b), 7-1903.33(b), or 7-1903.33(d) but the solicitation shall provide that in the event the contract is awarded on the alternative multiyear basis, paragraph (c) of the clause will be deleted and the following will be substituted for paragraph (b) of the clause:

"(b) As used herein, the term 'cancellation' means that the Government is cancelling, pursuant to this clause, its anticipated requirements for items as set forth in the schedule for all program years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur if, by the date or within the time period specified in the schedule or such further time as may be agreed to, the contracting officer (i) notifies the Contractor that funds will not be available for contract performance for any subsequent program year or (ii) fails to notify the Contractor that funds will be available for performance of a requirement for the succeeding program year. 'Cancellation' shall also be deemed to have occurred if, upon expiration of the final program year, the Government has failed to order the specified items in quantities up to the aggregate Best Estimated Quantity set forth in the schedule. Following cancellation under this clause of any program year(s), the Government shall not be obligated to issue nor the contractor to accept any further orders under this contract."

1-323 Safety Precautions for Hazardous Materials.

1-323.1 *Safety Precautions for Ammunition and Explosives.*

(a) The safety requirements of DoD 4145.26M, "DoD Contractors' Safety Manual for Ammunition, Explosives, and Related Dangerous Material" are to be applied to all contracts involving ammunition or explosives. To accomplish this policy, all solicitations and resulting contracts involving the development, testing, storage, manufacture, modification, renovation, demilitarization, packaging, transportation, handling, disposal, inspection, repair or other use of ammunition and explosives shall include the clause set forth in 7-104.79. The clause is not to be included in contracts solely because of:

- (i) inert components containing no explosives, active chemicals or pyrotechnics, or
- (ii) flammable liquids, acids or other chemicals having fire or explosive characteristics unless such chemicals are intended for initiation, propulsion or detonation as an integral or component part of an ammunition or explosive end item or weapon system.

(b) It is essential that contracts containing the above clause be administered in such manner as to assure safety without unnecessary application of the requirements of the Manual to contractor operations or facilities not directly involved. As provided in the clause, the requirements of the Manual are to be applied only to the contractor's operation relating to ammunition and explosives.

(c) Omission of the clause from solicitations and contracts referred to in (a) above or waiver of mandatory requirements of the Manual prior to contract award must be approved by the HPA or his sole designee. When mandatory requirements of the Manual are to be waived prior to award, the specific requirements to be waived must be set forth in the solicitation or by modification thereto. Care must be taken to assure that the waivers granted are compatible with sound safety principles.

(d) When hazardous materials other than ammunition and explosives are involved, see 1-323.2.

1-323.2 *Safety Requirements for Hazardous Materials Other Than Ammunition and Explosives.*

(a) Safety and Health Regulations promulgated by the Occupational Safety and Health Administration (OSHA) under Public Law 85-742 (Safety and Health Regulations for Ship Repairing, Shipbuilding, and Shipbreaking) and Public Law 91-596 (Occupational Safety and Health Act of 1970) require that employees be apprised of all hazards to which they may be exposed, relative symptoms and appropriate emergency treatment and proper conditions and precautions for safe use or exposure. Federal Standard 313A (Material Safety Data Sheet, Preparation and Submission of) details criteria for identification and certification of hazardous materials. To accomplish this objective, contractors and their subcontractors and vendors are required to submit hazardous material identification data and information necessary to assure the safe operation and environmentally acceptable disposal at Government activities through positive control over hazardous characteristics of materials used.

(b) Government activities are required to comply with OSHA standards with respect to insuring that employees are apprised of all hazards to which they may be exposed, relevant symptoms and appropriate emergency treatment, and for proper conditions and precautions of safe use or exposure. Therefore, all solicitations and resultant contracts which require the delivery of hazardous substances, as defined in Federal Standard No. 313A, or under which the performance of work, use, handling, manufacture, packaging, transportation, storage, inspection or disposal of, or any other use which will involve exposure to such hazardous materials shall include the clause in 7-104.98. Hazardous material identification data shall be required for procurement of all items in the Federal Supply Classes indicated in Table I of Appendix A of Federal Standard 313A and items that would ordinarily be cataloged thereunder and only those items having hazardous characteristics in the Federal Supply Classes indicated in Table II of Appendix A of Federal Standard 313A. With respect to items not cataloged under Federal Supply Classes listed in Appendix A of Federal Standard 313A, the clause in 7-104.98 shall, on the advice of the technical representative, be included in solicitations and resultant contracts only for material which by reason of its potentially dangerous nature, requires controls to assure adequate safety to life and property.

1-324 Warranties.

1-324.1 *General.* A warranty is a promise or affirmation given by a seller to a purchaser regarding the nature, usefulness, or condition of the supplies or performance of services to be furnished. The principal purposes of a warranty in a Government contract are to delineate the rights and obligations of the contractor and the Government for defective items and services and to foster quality performance. Generally, warranties survive acceptance of the contract items for a stated period of time or use, or until the occurrence of a specified event, notwithstanding other contractual provisions pertaining to acceptance by the Government. Thus, they allow the Government additional time after acceptance in which to assert a right consistent with the guidelines of this paragraph.

1-324.2 *Criteria For Use.*

(a) The use of a warranty must be approved by the Chief of the Purchasing Office (CPO) except such approval is not required in the following procurements:

(1) commercial items (see 3-807.7(b) and 1-324.3(c)); |

(2) firm fixed price and fixed price with economic price adjustment contracts containing quality assurance provisions that reference specifications MIL-I-45208 or MIL-Q-9858;

(3) technical data except when the warranty provides for extended liability; and

(4) construction contracts when the warranties contained in federal, military, or construction guide specifications applicable to a given construction project are used.

(b) The following factors shall be considered in deciding whether to use a warranty. These factors shall be considered together, and individual factors alone should not form the basis for a decision to use, or not to use, a warranty.

(1) *Nature of the Item (Supplies or Services).* It is important to consider the nature of the item and its end use in determining whether a warranty is appropriate. This consideration has various facets such as the complexity and function of the item, the degree of the development of the item and the state of the art, the difficulty of detecting defects in the item prior to acceptance by the Government, and the potential harm to the Government which could result if the item were defective. If for example, due to the nature of the item or existing quality assurance procedures, the Government does not have sufficient opportunity to examine the items in order to determine conformity with specifications or whether there are defects in material or workmanship, a warranty would be advantageous. It provides additional time after acceptance for the Government to take corrective action when defects or nonconformities are discovered. The type of specification involved should also be considered. When the design of the item is specified in detail by the Government, the contractor's obligations under a warranty normally extend only to defects in material and workmanship or failure to conform to specifications. When the Government does not specify the design, the warranty extends also to the usefulness of the design.

(2) *Cost.* In determining whether use of a warranty is advantageous to the Government, the benefits to be derived from the warranty must be related to the cost of the warranty to the Government. Warranty costs arise from the contractor's charge within the contract price for accepting the deferred liability created by the warranty and from the Government's administration and enforcement of

the warranty. A contractor may quote a higher price to provide the warranty. Necessarily, the degree of competition available on an item considered for warranty coverage is a major factor in the amount the contractor may include in his price to the Government for the warranty. In addition, the experience of the contractor in producing the item is another major factor in the cost of the warranty, since the contractor may rely on an actuarial basis to support his financial risk in warranties. As a further consideration, the estimated cost to the Government for correction or replacement by the contractor, by another source, or by the Government, in the absence of a warranty, should be compared to the warranty costs considered above.

(3) *Administration*. Essential to the effectiveness of any warranty right is the Government's ability to enforce the warranty. As a general rule, there must be some assurance that an adequate administrative reporting system for defective items exists or can be established. This depends upon such factors as: nature and complexity of the item; location and proposed use of the item; storage time for the item; distance of the using activity from the source of the item; difficulty in establishing existence of defects; and difficulty in tracing responsibility for such defects.

(4) *Trade Practice*. Another factor influencing the decision to include a warranty is whether or not the item is customarily warranted in the trade. In many instances, as a result of trade practice, the cost of an item to the Government will be the same whether or not a warranty is included. In such instances, it would be in the Government's interest to include such a warranty.

1-324.3 *Limitations*.

(a) Except as authorized in 1-324.6(c), warranties other than as contained in the clauses entitled Inspection of Supplies and Correction of Defects (7-203.5) and Inspection and Correction of Defects (7-402.5) shall not be included in cost-reimbursement type contracts.

(b) Any warranty clause included in a contract shall not limit any rights afforded to the Government by the provisions of the Inspection clause related to latent defects, fraud, or gross mistakes that amount to fraud. Further, except in the case of construction contracts warranty clauses, all such warranty clauses shall provide that the warranty therein applies notwithstanding inspection and acceptance by the Government or any provision of the contract concerning the conclusiveness thereof. As far as possible, the warranty clause should be used to express all warranties contemplated by this paragraph 1-324. Care should be taken to insure that the warranty clause used and any other warranty provisions in the contract (*e.g.*, in the specifications) are consistent.

(c) Contracts for commercial items, when use of a warranty is determined to be appropriate in accordance with 1-324.2, shall include a clause such as those in 7-105.7(a) or (b) modified in accordance with 7-105.7(d)(2), unless it is determined that the Government's planned usage of the item is inconsistent with the item's normal usage or that Government specifications have substantially altered the item. In these circumstances, a more appropriate warranty provision consistent with the guidelines of this paragraph shall be included. Also, the Government may adopt the contractor's standard commercial warranty when it is determined by the contracting officer that the provisions are not inconsistent with (i) the rights afforded the Government under the clauses in 7–105.7(a) or (b), or (ii) other provisions of the contract.

1–324.4 *Preparation of Warranty Provisions.* To facilitate both contract pricing and administrative enforcement of Government rights, warranties shall clearly set forth the exact nature of the item and its components and characteristics that the contractor warrants, and the extent of the contractor's warranty including all of the contractor's obligations to the Government for breach of the warranty. Many different factors must be considered in determining the precise warranty terms needed for the particular items. The terms and conditions of warranties may vary with respect to the scope and duration, the extent of the contractor's obligation, the specific remedies available to the Government, and other factors. Accordingly, in preparing such provisions the guidelines set forth below shall be considered.

(a) *Extent of Contractor's Obligations.* Generally, the contractor's obligations under warranties extend to all defects discovered during the warranty period. The term *defects* as used herein does not include damage caused by the Government. When a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item which may require special protection (*e.g.*, installation, components, accessories, subassemblies, preservation, packaging and packing, etc.). When the Government specifies the design of the item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for deficiencies shall usually be limited to defects in material and workmanship or failure to conform to specifications. When express warranties are included in contracts (except contracts for commercial items) all implied warranties of merchantability and fitness for a particular purpose shall be negated by use of the language in paragraph (i) of the clause in 7–105.7(a), paragraph (g) of the clause in 7–105.7(b), or paragraph (i) of the clause in 7–105.7(c).

(b) *Remedies.* Normally, a warranty shall provide, as a minimum, that the Government may obtain an equitable adjustment of the contract or direct the contractor to repair or replace defective items at the contractor's expense. When the item is of such a nature that repair or replacement by the contractor may not afford an appropriate remedy to the Government, or when repair or replacement is impractical, the warranty should provide alternate remedies to assure that the Government's interests are protected. For example, a warranty might state that the Government may return defective items to the contractor for repair, direct their replacement by the contractor, or arrange, at the contractor's expense, for their repair or replacement by the Government or an alternate source. When it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an alternate source for repair, or to replace the defective item, the warranty should provide that the Government may repair or require the contractor to repair the item in place at the contractor's expense. Unless provided otherwise in the warranty, the contractor's obligation to repair or replace, or agree to an equitable adjustment of the contract, shall include the costs necessary to furnish all labor and material to (i) reinspect items which the Government reasonably expected to be defective, (ii) accomplish the required repair or replacement of defective items, and (iii) test, inspect, package, pack, and mark repaired or replaced items. When repair or replacement of defective items is required, the contractor shall generally be required by the warranty to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant for repair or replacement and subsequent return of the corrected item. When defective items are returned to the contractor for repair or replacement from other than through the place of delivery specified in the contract or when the Government exercises alternate remedies for repair or replacement of the defective items as may be provided in the warranty clause, the contractor's liability for transportation charges incurred shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant and return.

(c) *Duration of the Warranty*. In preparing warranty provisions, care must be taken to clearly specify the time period or duration of the warranty. Time periods shall be established after consideration of such factors as (i) estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(d) *Notice*. A provision shall be included in a warranty specifying a reasonable time for furnishing notice to the contractor regarding the discovery of defective items. This notice period, which shall apply to all defects discovered during the warranty period, shall be long enough to assure the Government has adequate time to give notice to the contractor through administrative channels. In establishing the notice period, such factors as the following shall be considered: (i) time necessary for the Government to discover defects, (ii) time required for the Government to take necessary administrative steps to report discovery of defects to the contractor, and (iii) time required to discover and report defective replacements. However, the warranty should require prompt notice by the Government.

(e) *Markings*. The packaging and preservation provisions of contracts containing a warranty shall require the contractor to stamp or mark items delivered under the contract in accordance with MIL Standard 129, "*Marking of Shipments*," or to otherwise furnish notice with the item of the existence of the warranty. This will inform Government personnel who store, stock, or use the items that such items are under contract warranty. Markings required by the contract may be brief, but should include all data necessary to allow the user to determine whether the particular item is covered by the warranty. A brief statement that a warranty exists, the substance of the warranty, its duration, and who is to be notified if the item is found to be defective will generally be sufficient. For commercial items, the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify items under the contract warranty.

1-324.5 *Pricing Aspects of Fixed-Price Incentive Contract Warranty Provisions*. In fixed-price incentive contracts which contain warranty provisions, particular attention must be given to the pricing aspects of the warranty. The estimated costs of the warranty to the contractor should normally be considered in establishing the incentive target price. All costs of the warranty should be con-

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sidered in establishing the ceiling price of the contract. All costs incurred or estimated to be incurred by the contractor in complying with the warranty shall be considered when establishing the total final price. Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Government.

1-324.6 *Warranties of Technical Data.*

(a) The factors contained in 1-324.2 shall be considered in deciding whether to provide for warranties of technical data delivered under contracts calling for technical data.

(b) The factors of 1-324.2 should also be considered in determining whether there should be an extended liability provision, *e.g.*, 7-104.9(o)(2). Particular emphasis should be placed on whether the extended liability is justified by (1) the likelihood that correction or replacement of the nonconforming data, or a price adjustment in lieu thereof, will not afford adequate protection to the Government, and (2) the effectiveness of the additional remedy as a deterrent against furnishing nonconforming data.

(c) The "Warranty of Technical Data" clause, 7-104.9(o), may be included in both fixed price and cost reimbursement contracts. In addition, technical data is warranted under the clauses in 7-105.7(c), 7-203.5, 7-402.5, and 7-901.21 when the 7-104.9(o) clause is not included in the contract.

1-324.7 *Examples of Warranty Clauses.* The following are examples of warranty clauses:

(a) Fixed-price supply contracts, 7-105.7(a), for noncomplex items.

(b) Fixed-price research and development or supply contracts for deliverable complex items, 7-105.7(b).

(c) Fixed-price supply, service, or research and development contracts for systems and equipment when performance specifications and design are of major importance (*Correction of Deficiency* clause), 7-105.7(c).

(d) Fixed-price services contracts, 7-1904.5(b).

(e) Fixed-price construction contracts, 7-604.4.

1-325 Variation in Quantity.

1-325.1 *General.* To the extent that a variation is caused by the conditions specified in the clause in 7-103.4(a), that quantity may be accepted only to the extent specified in the Schedule. Except as set forth in 1-325.2, the permissible variation shall be stated as a percentage and may be an increase, a decrease, or a combination of both. There should be no standard or usual percentage or variation. Each procurement for which an overrun or underrun is permissible should be based upon the normal commercial practices of the particular industry for particular items, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. In no event shall the permissible variation exceed plus or minus 10%. The clause in 7-103.4(b) shall be included only when one or more of the causes of quantity variation foreseeable exists at the time of solicitation. Consideration shall be given to the quantity to which the percentage variation applies. For example, when it is contemplated that delivery will be made to multiple destinations and it is desired that the quantity variation extend to the item quantity for each destination, this requirement must be set forth with particularity. Similarly, when it is desired that the quantity variation extend to the total quantity of each item and not to the quantity for each destination, it may be desirable to express a percentage limitation for each destination to prevent unrealistic distribution of any increase or decrease.

1-325.2 *Subsistence*. The permissible variation in the procurement of small quantities of subsistence may be stated in the Schedule as follows:

(i) Standard pack items purchased on a package, carton, can or other than pound basis: maximum variation for 250 units or less— nearest full shipping container.

(ii) Nonstandard pack items other than carcass meats not purchased on a package, carton, or can basis: maximum variation for 250 pounds or less— nearest piece or shipping container.

(iii) Carcass meats: maximum variation for 500 pounds or less— nearest piece, quarter, side or carcass.

1-326 Component Breakout.

1-326.1 *Scope of Paragraph*.

(a) This paragraph sets forth guidance for making decisions on whether or not components should be purchased by the Government directly and furnished to an end item contractor as Government-furnished material, for incorporation in the end item. This paragraph, however, does not pertain to all such decisions, but only to those which deal with whether components that have been included as contractor-furnished material in a previous procurement of the end item should be "broken out" from a forthcoming end item procurement for direct Government purchase. Thus, except as set forth in 1-2101, this paragraph does not pertain to the initial Government-furnished equipment/contractor-furnished equipment decisions that must be made at the inception of a procurement program.

(b) Items procured as spare parts are governed by the "DoD High Dollar Spare Parts Breakout Program" described in DoD Joint Regulation AR 715-22, NAVMATINST P4200.33, AFR 57-6, MCO P4200.13, DSAM 4105.2, and are not covered by this paragraph.

(c) This paragraph applies to procurements of weapons systems or other items of major equipment involving components whose direct purchase by the Government may result in substantial net cost savings over the life of the procurement program. Accordingly, it will seldom be applicable to a procurement of such a system or item of less than $1,000,000. The term "component", as used in this paragraph, includes subsystems, assemblies, subassemblies, and other major elements of an end item, but does not include elements of relatively small annual purchase value.

1-326.2 *Policy*. Whenever it is anticipated that the prime contract for a weapons system or other major end item will be awarded without adequate price competition, and the prime contractor is expected to acquire a component without such competition, it is Department of Defense policy to break out that component if:

(i) substantial net cost savings will probably be achieved; and

(ii) such action will not jeopardize the quality, reliability, performance or timely delivery of the end item.

The desirability of breakout should also be considered (regardless of whether the prime contract or the component being purchased by the prime contractor is on the basis of price competition) whenever substantial net cost savings will result (A) from greater quantity purchases or (B) from such factors as improved logistics support through reduction in varieties of spare parts and economies in operations and training through standardization of design. Primary breakout consideration shall be given to those components of the end item representing the highest annual procurement costs and offering the largest potential net savings through breakout.

1-326.3 *Responsibility for Component Breakout Selection, Review and Decision.* The program manager, project manager, project officer, program director, or other official responsible for the material program concerned, supported by a project team (to include the Small Business Specialist, cognizant engineering, production, logistics, maintenance and other appropriate personnel, and the contracting officer or his designee), shall be responsible for:

(i) earmarking as susceptible to breakout those components potentially conforming to the criteria and policy set forth herein;
(ii) conducting the breakout review and evaluation described in 1-326.4;
(iii) making the decision whether or not to break out the component; and
(iv) preparing records explaining such decisions in compliance with 1-326.5.

1-326.4 *Breakout Guidelines.*

(a) Each decision on whether or not to break out a component must embrace (i) assessment of the potential risks of degrading the end item through such contingencies as delayed delivery and reduced reliability of the component, (ii) calculation of estimated net cost savings (*i.e.*, estimated purchase savings less any offsetting costs), and (iii) analysis of the technical, operational, logistic and administrative factors involved. As to each of these, the decision must be supported by adequate explanatory information, including an assessment by, and consultation with, the end item contractor when feasible.

(b) In deciding whether a component should be broken out, the guidelines set forth below (in the form of questions) should be considered. Answers will rarely be "positively yes" or "positively no" but usually "probably yes" or "probably no", with the degree of probability governed by the facts of the particular case. The decision will depend largely upon the degree and significance of the risks to quality performance, reliability and timely delivery of the end item which would be involved in breakout and upon the estimated overall cost savings. Where the risks, if any, are acceptable and breakout is expected to result in substantial overall cost savings, the component should be broken out. On the other hand, if such risks are unacceptable, the components should not be broken out.

(i) Are the design of the component (and the design of the end item insofar as it will affect the component) sufficiently stable that further design or engineering effort by the end item contractor in respect to the component is unlikely to be required?
(ii) Is a suitable data package available with rights to use it for Government procurement? (Note that breakout may be warranted even though competitive procurement is not possible.) (See Section IX, Part 2.)
(iii) Can any problems of quality control and reliability of the component be resolved without requiring effort by the end item contractor?

(iv) Is it anticipated that requirements for technical support (*i.e.*, functions such as development of proposed detailed specifications; development of test requirements to prove design adequacy or compliance with design; monitoring tests to assure compliance with established requirements; definition of quality assurance requirements for production of articles; and analysis and correction of service-revealed deficiencies) heretofore performed by the end item contractor will be negligible? If not, does the Government have the resources (manpower, technical competence, facilities, etc.) to provide such support, or can such support be obtained from the end item contractor (even though the component is broken out) or other source?

(v) Can breakout be accomplished without causing unacceptable difficulties in logistics support (*e.g.*, by jeopardizing requisite standardization of components)?

(vi) Can breakout be accomplished without causing over fragmentation of the end item that might materially impede administration, management, and performance of the end item contract (*e.g.*, by unduly complicating production scheduling or identifying (and fixing responsibility for) end item failure that may be caused by a defective component)?

(vii) Can breakout be accomplished without jeopardizing delivery requirements of the end item?

(viii) If a decision is made to break out a component and to acquire it from a new source, can advance procurement funds be made available to provide that source any necessary additional lead time?

(ix) Is there a source other than the present manufacturer capable of supplying the component?

(x) Has the component been (or is it known that it is going to be) purchased directly by the Government as a support item in the supply system or as GFE in other end items?

(xi) Would the financial risks and other responsibilities being assumed by the prime contractor that will have to be assumed by the Government if the item is broken out be acceptable?

(xii) Will breakout result in substantial net cost savings? Estimates of probable savings in cost, should be developed for each case on its own facts, with consideration given to any estimated offsetting costs such as increases in the cost of requirements determination and control, contracting, contract administration, data package purchase, material inspection, qualification or preproduction testing, ground support and test equipment, transportation, security, storage, distribution, and technical support.

(c) If application of the guidelines in (b) above reveals conditions currently unfavorable to breakout, the feasibility of eliminating such conditions should be considered. For example, where adequate technical support is not available from Government resources, or similar assistance must be obtained in order to successfully accomplish breakout, consideration should be given to the procurement of the necessary services, such as product assurance suitability services, from the end item contractor or other qualified source.

1-326.5 *Records and Review Procedure.* The records of the purchasing activity shall contain documentation of:

(i) those components which have been reviewed and determined to have no potential for breakout;
(ii) those components which have been reviewed and earmarked as being susceptible to breakout pursuant to 1-326.3; and
(iii) those components for which a decision to break out has been made.

Documentation of these three categories, and for those components once earmarked but no longer considered susceptible to breakout, shall be signed by the cognizant project manager or other designated official and reflect the facts and conditions of the case, including any assessment by the contractor, and the basis for the decision. Components that have been earmarked for potential breakout shall be reviewed well in advance of each successive procurement, with a decision made as to whether the component will be broken out for the ensuing procurement. Such reviews, made preferably in the course of requirements determination, but in any event before procurement of the requirement is initiated, shall be repeated until a final decision on whether or not to break out is reached, and shall be documented. When breakout is delayed or postponed, the documentation shall include a description of the actions required to accomplish breakout, identify the activities responsible for such actions, and indicate the fiscal year when breakout should be effected.

1-327 Protection of Individual Privacy.

1-327.1 *General.*

(a) Section 3 of the Privacy Act of 1974 (Public Law 93-579, 31 December 1974; 5 U.S.C. 552a), and OMB Circular No. A-108, 9 July 1975, requires that when a Federal agency contracts for the design, development, operation or maintenance of a system of records on individuals on behalf of the agency in order to accomplish an agency function, the agency must apply the requirements of the Act to the contractor and his employees working on that contract. Systems of records on individuals operated under a contract which are designed to accomplish an agency function are deemed to be maintained by the agency and are subject to Section 3 of the Act. All procurement requirements will be reviewed by the contracting officer when they are submitted to determine whether the operation of a system of records on individuals as defined in Appendix P (DoD Directive 5400.11), or the design or development of such a system, will be required of the contractor. If so, the solicitation and contract shall include the appropriate notification in 7-2003.72 and clause in 7-104.96, and pertinent implementing Departmental regulations. All contract work statements shall specifically identify (i) the system or systems of records on individuals and (ii) the work to be performed by the contractor in terms of any one or combination of the following: (A) design, (B) development, or (C) operation.

(b) A Department which within the limits of its authority fails to require that systems of records on individuals operated on its behalf under contracts be operated in conformance with the Privacy Act may be civilly liable to individuals injured as a consequence of any subsequent failure to maintain records in conformance with the Act. Any officer or employee of the Department may be criminally liable for violations of the Act. The reference in the Act to the contractor and his employees as employees of the Department is intended only for the purposes of the criminal sanctions of the Act and not to suggest that by virtue of this language, they are employees for any other purposes.

1–327.2 *Definitions.* As used herein, the following terms have the meanings set forth below:

(a) The term "*agency*" means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(b) The term "*individual*" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) The term "*maintain*" includes maintain, collect, use, or disseminate.

(d) The term "*record*" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(e) The term "*system of records on individuals*" means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(f) The term "*operation of a system of records*" means performance of any of the activities associated with maintaining the system of records including the collection, use, and dissemination of records.

(g) The term "*the Act*" means the Privacy Act of 1974 (Public Law 93–579, 31 December 1974).

1–327.3 *Applicability.*

(a) For the Act to be applicable, the contract need not have as its sole purpose the design, development, or operation of such a system of records, but the contract should specifically provide for the design, development, or operation of a system; *e.g.*, when the contract can be performed only by the design, development, or operation of a system. The Act is not applicable to a system used by a contractor as a result of his management discretion. It is not applicable, for example, to systems of personnel records maintained by Defense contractors on their own behalf.

(b) The Act applies to systems of records on individuals when, for example:
  (i) determinations on benefits are made by Federal agencies;
  (ii) records are maintained for administrative functions of the Federal agency such as personnel, payroll, etc.; or
  (iii) health records are maintained by an outside contractor engaged to provide health services to agency personnel.

(c) The Act does not apply to systems of records on individuals when:
  (i) records are maintained by the contractor on individuals whom the contractor employs in the process of providing goods and services to the Federal Government;

(ii) an agency contracts with a state or private educational organization to provide training, and the records generated on contract students pursuant to their attendance (admission forms, grade reports) are similar to those maintained on other students and are commingled with their records on other students.

1-328 Procurement of Publications.

(a) Subscriptions to newspapers, magazines, or other publications may be entered for periods longer than one year when it is advantageous to the Government for the purpose of economy or otherwise. Payment therefor may be made from current appropriations otherwise available for such purpose.

(b) Advance payments may be made for publications purchased for official use. Publications include books, pamphlets, newspapers, periodicals and prints.

1-329 Release of Procurement Information.

1-329.1 *Purpose and Scope.*

(a) Public Law 89-487 (as codified by Public Law 90-23 in Section 552 of Title 5, United States Code and as amended by Public Law 93-502 and Public Law 94-409) provides that information is to be made available to the public either by (i) publication in the Federal Register, (ii) providing an opportunity to read and copy records at convenient locations, or (iii) upon request, providing a copy of a reasonably described record. Materials to be published or made available under (ii) and (iii) above will be determined in accordance with applicable provisions of Appendix L (DoD Directive 5400.7 and DoD Regulation 5400.7-R) and implementing Departmental regulations. General policy guidelines and procedures to be followed in responding to public requests for procurement records are contained in Appendix L.

(b) Request for copies, or for the inspection of procurement records should be addressed to the procuring activity, purchasing office or other appropriate activity having cognizance of the information or document desired by the party making the request. If the identity of the activity is not known, the request should be addressed to the most appropriate office as follows:

[The next page is 1:71.]

Army:

Deputy Assistant Secretary (Acquisition)
Office of the Assistant Secretary of the Army
(Research, Development, and Acquisition)
Department of the Army
Washington, D. C. 20310

Navy:

Chief of Naval Material (MAT 00D1)
Navy Department
Washington, D. C. 20360

Air Force:

HQ USAF/RDX
The Pentagon
Washington, DC 20330

DLA:

Staff Director, Administration
Headquarters, Defense Logistics Agency
Attention DLA-X
Cameron Station
Alexandria, Virginia 22314

NSA:

Director of Procurement
Fort Meade, MD 20755

DCA:

HQ, Defense Communications Agency
Attention Code 201
Washington, D. C. 20305

DNA:

HQ. Defense Nuclear Agency
Washington, D. C. 20305

DMA:

HQ. Defense Mapping Agency, Attn: DMA-LO,
Washington, D. C. 20390

1-330 Contractor Liability for Damage to Government Property.

(a) *Policy*. It is the policy of the Department of Defense generally to act as a self-insurer for loss of or damage to property of the Government occurring after acceptance of supplies delivered to the Government or performance of services for the Government when the loss of or damage to property results from any defects or deficiencies in such supplies or services. This policy shall not apply:

(i) to loss of or damage to the contract end item itself (except in the case of major items as provided in (c) below); or

(ii) when contractor liability can be preserved without increasing the contract price; or

(iii) when contractor liability is expressly provided by a clause authorized by this Regulation.

(b) *General.* Except as provided in (a) above or in (c) below, the basic "*Limitation of Liability*" clause in 7-104.45(a) shall be inserted in all contracts exceeding $10,000. This clause relieves the contractor from liability for loss of or damage to Government property except for end items delivered under the contract.

(c) (1) *Major Items* - In the procurement of major items (normally exceeding $100,000 in unit cost) such as missiles, aircraft, tanks, ships, aircraft engines and navigational or communication systems, it is Department of Defense policy, in addition to (a) above, to relieve the contractor from liability for loss of or damage to such major item(s) occurring after acceptance by the Government: (i) for all fixed price type contracts for major items, the clause in 7-104.45(b) shall be substituted for the clause in 7-104.45(a); (ii) for all cost type contracts for major items, the clause in 7-204.33(a) shall be substituted for the clause in 7-104.45(a). These clauses do not limit the Government's rights otherwise arising under the contract to have any defective items or components thereof, corrected, repaired, or replaced when discovery of the defect occurs prior to the loss of or damage to the major item, or equitable relief when the defect is discovered after loss or damage occurs.

(2) *Contracts Providing For Both Major Items And Other Contract End Items.* In a contract providing for the purchase of both major items and other contract end items, both a major items clause and the basic clause shall be inserted in accordance with the instructions in 7-104.45(c) for fixed-price type contracts and 7-204.33(b) for cost type contracts.

(3) *Service Contracts.* The clause in 7-1912 shall be inserted in all contracts requiring the performance of services (see 22-101(a)). For contracts requiring the performance of services and the delivery of supplies as separate line items, the appropriate clause in 7-104.45 shall be used in conjunction with the clause in 7-1912, and the line items to which each applies clearly identified. However, the clause in 7-1912 shall not be inserted in service contracts for the maintenance, repair, rehabilitation or modification of real property (22-101(b)(ii)) or for architect-engineering services (22-101(b)(iii)).

(4) *Subcontracts.* The "*Limitation of Liability*" clauses in 7-104.45, 7-204.33 and 7-1912 require the contractor to insert the substance of the clause applicable to its contract in any subcontracts, except that, a contractor under a contract for major items shall not insert the substance of the major items clause in either 7-104.45(b) or 7-204.33(a) in any subcontracts without the advance written approval of the contracting officer. The contracting officer should give this approval only when the circumstances would dictate use of the major items clause under the guidelines of (1) above if the subcontract were a direct prime contract with the Government.

(5) *Purchase Orders.* The clause in 7-104.45(a) or 7-1912, as applicable, may be used with the DD Form 1155, *Order for Supplies or Services/Request for Quotations* for procurements not in excess of $10,000, when specifically requested for inclusion by the contractor.

(6) *Catalog or Market Price Items*. Contractors generally carry products liability insurance or similar insurance coverage or maintain a reserve for self-insurance covering liability arising out of defective items. Accordingly, a "*Limitation of Liability*" clause should not be used for items being priced as catalog or market priced items (see 3-807) unless there is an appropriate reduction in the catalog or market price to reflect reduced contractor liability.

(7) *Technical Data*. For Department of Defense policy on contractor liability to the Government caused by nonconforming technical data, see 1-324.6.

(8) *Foreign Military Sales Contracts*. In procurements for foreign military sales, see 6-1308.

1-331 Management Systems.

(a) A management system is a documented method for assisting managers in defining or stating policy, objectives or requirements; assigning responsibility; controlling utilization of resources; periodically measuring performance; comparing that performance against stated objectives and requirements; and taking appropriate action. A management system may encompass part or all of the foregoing areas and will require the generation, preparation, maintenance, and/or dissemination of information by a contractor.

(b) The responsibility for determining management systems requirements and for completion of the DD Form 1660, Management Systems Summary List, is vested in the project officer, program manager, commodity manager, or other requiring office. Procedures for review of the DD Form 1660 by the contracting officer are specified in 16-827.3.

(c) Although the judicious application of management systems on all contracts regardless of size is important, use of the DD Form 1660 is only required on those contracts exceeding $1,000,000.

(d) Pursuant to the above, appropriate management systems shall be contractually applied only if they are:

(i) required by a standard ASPR clause;
(ii) listed in DoD Directive 5000.19-L, Volume II, Acquisition Management Systems and Data Requirements Control List (AMSDL); or
(iii) approved for a specific application by the Secretary of the Department concerned or his designee.

The proposed prescribing document for each management system must have been cleared as required by OMB Circular A-40.

(e) Approved management systems, except those specified in this Regulation, shall be listed on a DD Form 1660 (see F-200.1660). An approved DD Form 1660 and the contract clause titled "Management Systems Requirements" (see 7-104.50) shall be included in all contracts when applicable.

(f) The DD Form 1660 procedures help to achieve the following objectives with respect to the management of programs and the acquisition of management data:

(1) Management systems selected for use in managing the contract / program should be limited to those that are essential to the fulfillment of the responsibilities of the Department of Defense and contractor.

(2) More than one management system satisfying the same requirement should not be specified on a single contract.

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(3) The management data requirements in a contract, should be formally approved, should not exceed the needs of the planned program management approach, and should be specifically identified on an individual item basis.

(g) Instructions for the preparation, review and use of DD Form 1660 are in 16-827.

(h) When compliance with the Cost/Schedule Control Systems Criteria in accordance with DODI 7000.2 Performance Measurement for Selected Acquisitions is required, the solicitation and resulting contract shall include the provisions in 7-2003.43 and 7-104.87 respectively.

1-332 Employment Consideration, Redwood National Park Expansion Act. Section 103(e) of Public Law 95-250, the Redwood National Park Expansion Act, requires that employment consideration for certain jobs be afforded to individuals displaced from their employment or adversely affected as a result of the expansion of the Redwood National Park. The law applies to any contract or subcontract thereunder that (i) requires employment of individuals primarily in the northern California counties of Humboldt, Del Norte, Trinity, Siskiyou and Mendocino and (ii) involves the conduct of harvesting and related activities or replanting and land rehabilitation or the conduct of wood processing and related activities or the conduct of highway construction and related activities. New contracts subject to (i) and (ii) above which are awarded prior to September 30, 1984, shall include the clause at 7-104.36. In addition, existing contracts which are subject to the above will be amended to include the clause where it is practicable to do so. Questions concerning the proper administration of this clause may be directed to the following offices:

Redwood Employee Protection Program
U. S. Department of Labor
Room N 5639
200 Constitution Avenue, N.W.
Washington, D.C. 20210
Telephone: (202) 523-6495

California Employment Development Department
409 K Street
Eureka, CA 95501
Telephone: (707) 445-0851

California Employment Development Department
485 I Street
Crescent City, CA 95531
Telephone: (707) 496-2111

California Employment Development Department
1325 Pine Street
Redding, CA 96001
Telephone: (916) 246-6211

1-333. Reserved.

1-334 Major Defense Systems Acquisition. Contract type shall be consistent with all program characteristics including risk to the contractor and Government. Normally, the precise production cost of a new complex Defense system cannot be determined prior to development and this creates a situation of risk such that:

(i) the total package procurement concept will not be used;

(ii) firm or ceiling priced production options shall not be used in development contracts. However, when development of major systems has proceeded to a point that technical and performance uncertainties have been minimized and realistic estimates of their cost identified, firm or ceiling priced production options for limited quantities may be included in the development contract. Such options may be appropriate, for instance, when prototyping or other forms of technical and cost verification of concepts has occurred;

(iii) cost type prime and subcontracts are preferred where substantial development effort is involved;

(iv) when risk is reduced to the extent that realistic pricing can occur, fixed-price type contracts should be issued;

(v) letter contracts shall be minimized; and

(vi) changes shall be limited to those that are necessary or offer significant benefit to the DoD. When change orders are necessary, they shall be contractually priced or subject to an established ceiling before authorization, except where this is impractical.

1-335 Life Cycle Costing. The Life Cycle Cost of a system or item of equipment is the total cost to the Government of acquisition and ownership of that system or item of equipment over its full life. It includes the cost of development, acquisition, operation, support, and where applicable, disposal. Since the cost of operating and supporting the system or equipment over its useful life is substantial and, in many cases, greater than the acquisition cost, it is essential that such costs be considered in development and acquisition decisions in order that proper consideration can be given to those systems or equipments that will result in the lowest life cycle cost to the Government. Guidelines, including representative detailed procedures for implementing life cycle costing are contained in the following documents published by the Under Secretary of Defense for Research and Engineering:

(i) LCC-1, DoD Life Cycle Costing Procurement Guide (Interim);

(ii) LCC-2, DoD Life Cycle Costing Casebook;

(iii) LCC-3, Life Cycle Costing Guide for System Acquisitions (Interim).

1-336 Preference for United States Flag Air Carriers.

1-336.1 *Policy.*

(a) Public Law 93-623 requires that all Federal agencies, Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(b) The clause in 7-104.95 shall be included in (i) invitations for bids, (ii) requests for proposals, and (iii) contracts (including contracts resulting from unsolicited proposals) whenever it is possible that international air transportation of personnel (and their personal effects) or property will be required in the performance of the contract. The requirements of this paragraph do not apply to small purchases made in accordance with Section III, Part 6.

1-336.2 *Availability or Unavailability of Certificated Air Carrier.*

(a) Expenditures for service furnished by a non-certificated air carrier generally will be allowed only when services by a certificated air carrier or carriers is "unavailable" as indicated by June 17, 1975, Comptroller General's memorandum (B-138942) entitled "*Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974.*"

(b) Passenger or freight service by a certificated air carrier is considered "available" even though:

(i) comparable or a different kind of service by a non-certificated air carrier costs less, or

(ii) service by a non-certificated air carrier can be paid for in excess foreign currency, or

(iii) service by a non-certificated air carrier is preferred by the agency or traveler needing air transportation, or

(iv) service by a non-certificated air carrier is more convenient for the agency or traveler needing air transportation.

(c) Passenger service by a certificated air carrier will be considered to be "unavailable:"

(i) when the traveler while en route has to wait six hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

(ii) when any flight by a certificated air carrier is interrupted by a stop anticipated to be six hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the six hour period, or

(iii) when by itself or in combination with other certificated or non-certificated air carriers (if certificated air carriers are "unavailable") it takes twelve or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a non-certificated air carrier or carriers.

1-336.3 *Disallowance of Expenditures.* The Act and the Comptroller General's memorandum provide that he will disallow any expenditures for commercial foreign air transportation or non-certificated air carriers unless there is included in the appropriate voucher a justification explaining why service by certificated air carriers was "unavailable." The justification requirement is satisfied by the contractor's use of the certification contained in the contract clause which is prescribed by 1-336.1(b).

1-336.4 *Air Freight Forwarders.*

(a) International air freight forwarders, as defined in 14 CFR 297.1(c) and 297.2 (1974) that are engaged in international air transportation (49 U.S.C. 1301(21)(c)(1970)) may be used for Government-financed movements of property. The rule stated in 1-336.3 also applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

(b) In order that bills submitted by international air freight forwarders engaged in international air transportation may be paid upon presentation, such carriers shall submit with their bills a copy of the airway bill or manifest showing the underlying air carriers utilized with such justification certifications as they may have for the use of underlying non-certificated air carriers. Use of the prescribed certification satisfies the justification requirement.

1-337 Should Cost. Should cost is a concept of contract pricing that employs an integrated team of Government procurement, contract administration, audit and engineering representatives to conduct a coordinated, indepth cost analysis at the contractor's plant. The purpose is (i) to identify uneconomical or inefficient practices in the contractor's management and operations and to quantify the findings in terms of their impact on cost, and (ii) to develop a realistic price objective which reflects reasonably achievable economies and efficiencies. A should cost review will be made in connection with the procurement of a system or item which will require a DSARC approval, unless the contracting officer makes written determination that the potential savings to be realized do not justify the expense of such a should cost review. Such determination shall be included in the Procurement Plan (see 1-2100). Should cost reviews should also be considered in procurements when: there are future year production requirements for substantial quantities of like items; there has already been some initial production; the competitive forces are insufficient to ensure economical and efficient performance (*e.g.*, sole source); the specification is comparatively definitive and not likely to be changed; and the present and potential value of the work to be performed is substantial.

1-338 Design to Cost.

(a) Cost is a contract parameter equal in importance with technical, delivery and performance requirements throughout the design, development, production and operation of defense systems, subsystems, components and equipments. Design to cost is a concept which recognizes this principle by requiring the establishment of cost elements as management goals to achieve the best balance between life cycle cost, acceptable performance, and schedule. Cost, under this concept, is a design parameter during design and development, and a management discipline throughout the acquisition and operation of the system or equipment. Policies and procedures for the application of design to cost are contained in DODD 5000.28.

(b) The principles of design to cost shall be applied in all procurements for Major Defense Systems (DODD 5000.1) unless exempted by the Secretary of Defense. Design to cost principles shall also be applied to the acquisition of systems, subsystems, and components below the thresholds for Major Defense Systems, to the extent prescribed in DODD 5000.28, and in accordance with Departmental procedures.

(c) Design to cost considerations are essential elements of sound procurement planning under 1-2100. Such planning shall include the establishment of design to cost objectives and goals and determinations of how they are to be applied, tracked, and enforced. To be effective, the design to cost approach should be planned at the inception of the program, should encompass all phases of the program, and should be kept current by regular reviews both at appropriate intervals and at program milestones.

(d) In solicitations and contracts including design to cost principles, consideration should be given to prescribing and tailoring the required cost, technical and schedule parameters to the particular program, and to providing the contractor with flexibility to identify unnecessary or marginally cost effective technical and schedule features susceptible to trade-offs (see DODD 4105.62). This is to facilitate product development at the lowest life cycle cost consistent with mandatory schedule and performance requirements.

(e) For the relationship of design to cost to value engineering, see 1-1707.

1-339 Energy Conservation.

(a) The Energy Policy and Conservation Act requires that Federal procurement policies governing requirements determinations and source selection decisions provide for consideration of (i) conservation of energy and (ii) the relative energy efficiency of alternative goods or services capable of satisfying the Government's needs.

(b) The energy conservation and energy efficiency criteria shall be applied in the determination of requirements and source selection decisions whenever the application of such criteria would be meaningful, practical, and consistent with agency programs and operational needs. Under this policy, energy conservation and efficiency criteria shall be considered for application along with price and other relevant factors in the preparation of solicitations, the evaluation of offers, and the selection of bids and proposals for award.

(c) With respect to the procurement of consumer products, executive agencies shall take cognizance of energy use / efficiency labels and prescribed energy efficiency standards as they become available.

1-340 Distribution of Defense Subcontracts Placed Overseas. To assist DoD monitoring of arms cooperation agreements with friendly governments, the clause in 7-104.78 shall be inserted in any contract for other than commercial items to be awarded which is expected to exceed $500,000, or when any modification increases the amount of a contract to more than $500,000. In the latter case, the reporting requirement will not be retroactive so as to require the reporting of subcontracts awarded prior to such a modification. This clause shall not be inserted in contracts for ores, natural gas, utilities, petroleum products and crudes, timber (logs) and subsistence.

1-341 Reserved.

1-342 Certification of Requests for Adjustment or Relief Exceeding $100,000.

(a) Section 813 of the 1979 Department of Defense Appropriation Authorization Act, Public Law 95-485, requires the certification of contract claims, requests for equitable adjustment to contract terms, requests for relief under Public Law 85-804, and similar requests exceeding $100,000. This certification must be signed by a senior company official in charge at the plant or location involved. Although the law only requires submission of the certification with requests exceeding $100,000, even if the requirement is not set forth in the contract, the clause contained in 7-104.102 shall be inserted in all contracts expected to exceed $100,000 in value.

(b) Submission of the Section 813 certification is required in addition to any certification required by the Truth in Negotiations Act and by 3-807.

(c) Section 6(c) of the Contract Disputes Act, Public Law 95-563, also requires the certification of claims. The Section 813 certification described above is due when the claim or request for relief is first asserted to the Government. However, the certification under the Contract Disputes Act is due only after a dispute has come into being and the contractor submits a written claim for the purpose of obtaining a contracting officer's decision. A single certification, using the language prescribed by the Contract Disputes Act but signed by a senior company official in charge at the plant or location involved, can be used to comply with both statutes in those situations where the first assertion of a claim or request for relief coincides with the inception of a contract dispute.

(d) In determining when the dollar thresholds requiring a Section 813 certification described above are met, the aggregate amount of both the increased and decreased costs shall be used. (See examples at 3-807.3(b)(ii).)

Part 4—Procurement Responsibility and Authority

1–400 Scope of Part. This Part deals with the procurement responsibility and authority of (i) the Head of a Procuring Activity, (ii) purchasing offices, (iii) contract administration offices, and (iv) contracting officers, and with the appointment of contracting officers. This Part also imposes limitations upon the authority to enter into and administer contracts. For the purpose of this Part, the term "contracting officer" does not include authorized representatives of the contracting officer.

1–401 Responsibility of Each Procuring Activity. Except as otherwise prescribed by procedures of each respective Department, the Head of a Procuring Activity is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity.

1–402 Authority of Contracting Officers. Contracting officers at purchasing offices (see 1–201.24) are authorized to enter into contracts for supplies or services on behalf of the Government, and in the name of the United States of America, by formal advertising, by negotiation, or by coordinated or interdepartmental procurement; and when authorized by 20–703 to administer such contracts, in accordance with this Regulation. This authority is subject to the requirements prescribed in 1–403 and 1–404 and any further limitations, consistent with this Regulation, imposed by the appointing authority. Contracting officers at contract administration offices (see 1–201.25) are, except as provided in 20–703.3, authorized to perform the applicable contract administration functions (see 1–406) and to perform additional procurement functions when delegated by the purchasing office.

1–403 Requirements To Be Met Before Entering Into Contracts. No contract shall be entered into unless all applicable requirements of law and of this Regulation, and all other applicable procedures, including business clearance and approval, have been met.

1–404 Special Requirements To Be Met Before Entering Into Negotiated Contracts. In addition to the requirements in 1–403, no negotiated contract shall be entered into until the determinations and findings required by Section III, Parts 3 and 4, with respect to the circumstances justifying negotiation and with respect to any use of a special method of contracting have been made.

1–405 Selection, Appointment, and Termination of Appointment of Contracting Officers. The selection, appointment, and termination of appointment of contracting officers shall be made only by the Secretary of the Department, the Head of a Procuring Activity, or their designees.

1–405.1 *Selection.*

(a) *Considerations.* In selecting contracting officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, reputation, and ethics.

(b) *Evaluation of Experience, Training, and Education.* In considering experience, training, and education, the following shall be evaluated:

- (i) experience in a Government procurement office, commercial procurement, or related fields;
- (ii) formal education or special training in business administration, law, accounting, or related fields;

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(iii) completion of the Defense Procurement Management Course or other procurement courses; and

(iv) knowledge of the provisions of this Regulation and of other applicable regulations.

1-405.2 *Appointment.*

(a) Except for those individuals who are designated contracting officers by position, appointment of contracting officers shall be made on DD Form 1539, Certificate of Appointment, issued by the appointing official (see F-200.1539). Any limitations on the scope of the authority to be exercised by the contracting officer, other than those contained in this Regulation, shall be entered on the face of the certificate. Certificates may be serially numbered.

(b) The office of each appointing authority shall maintain a file containing all documents (such as resumes, references, and records of training) necessary to support the appointment of each contracting officer.

1-405.3 *Termination of Appointment.*

(a) *Automatic Termination.* Unless the appointment of a contracting officer contains other provision for automatic termination, the appointment shall remain effective, unless sooner revoked, until the contracting officer is reassigned or his employment is terminated.

(b) *Revocation.* The appointment of a contracting officer may be revoked at any time by the appointing authority, or higher appointing authority, or any successor to either, but no such revocation shall operate retroactively. Revocation of the appointment shall be made by letter, reading substantially as follows:

> ....(Date)
> SUBJECT: Termination of Appointment As Contracting Officer,
> Certificate of Appointment, Serial No. ....
> TO: (*Name, grade or rank, arm of service,*
> *and service number, if any.*)
> 1. Your appointment as Contracting Officer contained in the
> subject Certificate is hereby terminated
> effective ....19........
> .... (*Signature and Title*).

1-405.4 *Modification.* To accomplish modification of a contracting officer's authority, his present appointment shall be revoked, and a new certificate issued.

1-405.5 *Assignment of Duties to Contracting Officers.* In assignment of duties, including execution and administration of contracts, consideration shall be given to the ability, training and experience of the contracting officer. Duties, involving contracts of large dollar value and complexity, shall be given only to personnel with commensurate experience, training, and ability.

1-406 Contract Administration Functions.

(a) When a contract is assigned for administration, functions which have been determined to be the responsibility of the contract administration component will automatically be performed by that component, and a delegation or assignment letter is unnecessary. However, if special instructions pertaining to administration of a particular contract are to apply, they should be contained in a letter accompanying the contract when it is assigned for administration. Such letters will not reference directives of the procuring department without the prior concurrence of the department performing contract administration services.

(b) Each contract assigned by a purchasing office to a contract administration component for administration shall contain or be accompanied by all procuring agency instructions or directives which are incorporated in such contract by reference. This will not be necessary if a copy has been previously furnished for application to that contractor.

(c) This paragraph constitutes the authority of the contract administration office designated in accordance with Section XX, Part 7, of this Regulation, to perform contract administration functions to the extent applicable, in accordance with this Regulation, the provisions of contracts assigned for administration, and the directives of the department performing the services. Functions listed below are the responsibility of, and, except as provided in 20-703.3, shall be performed by, contract administration offices:

(i) review contractor's compensation structure;
(ii) review the contractor's insurance plans;
(iii) review and approve or disapprove contractor's requests for payments under the progress payments clause;
(iv) determine the allowability of costs suspended or disapproved on a DCAA Form 1 when a written appeal has been received from the contractor, direct the suspension or disapproval of any costs when there is reason to believe that they should be suspended or disapproved, and approve final vouchers;
(v) establish final overhead rates and billing rates for those contractors meeting the criteria for procurement determination set forth in 3-705;
(vi) negotiate understandings consistent with agreements negotiated under 15-107 applicable to treatment of costs under contracts currently assigned for administration;
(vii) negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures;
(viii) review and evaluate contractor's proposals in accordance with 3-801.5(b) and furnish comments and recommendations to the procuring contracting officer when negotiation will be accomplished by the procuring contracting officer;
(ix) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause (Prior to completion of negotiations and issuance of the supplemental agreement, any delivery schedule change shall be coordinated with the purchasing office.);
(x) manage special bank accounts;
(xi) assure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-type contracts;
(xii) review, approve or disapprove and maintain surveillance of the contractor's procurement system;
(xiii) consent to the placement of subcontracts;

(xiv) monitor contractor's financial condition and advise the procuring contracting officer when contract performance is jeopardized thereby;

(xv) when authorized by the purchasing office, negotiate prices and execute priced exhibits for unpriced orders issued by the procuring contracting officer under basic ordering agreements;

(xvi) issue tax exemption certificates;

(xvii) conduct post-award orientation conferences;

(xviii) issue work requests under maintenance, overhaul and modification contracts;

(xix) negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Section VIII;

(xx) perform necessary screening, redistribution and disposal of contractor inventory;

(xxi) perform property administration;

(xxii) prepare findings of fact and issue decisions under the Disputes clause on matters on which the contract administration office has the authority to take definitive action;

(xxiii) assure processing and execution of duty-free entry certificates;

(xxiv) in facilities contracts—

  (A) evaluate contractor's requests for facilities and changes to existing facilities, and provide the procuring contracting officer with appropriate recommendations thereon;

  (B) assure required screening of facility items before acquisition by contractor;

  (C) approve use of facilities on a noninterference basis in accordance with paragraph (b) of the clause in 7–702.12;

  (D) assure payment of any rental due; and

  (E) assure reporting of items no longer needed for defense production;

(xxv) perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract schedules;

(xxvi) perform pre-award surveys;

(xxvii) perform industrial readiness and mobilization production planning field surveys and schedule negotiations;

(xxviii) monitor contractor industrial labor relations matters under the contract; apprise the procuring contracting officer and cognizant departmental labor relations advisor of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plants upon instructions from, and authorizations of, the procuring contracting officer and the cognizant departmental labor relations advisor;

(xxix) perform traffic management services including issuance and control of Government bills of lading and other transportation documentation;

(xxx) review the adequacy of the contractor's traffic operations;

(xxxi) review and evaluate preservation, packaging, and packing;

(xxxii) perform engineering surveillance to assess compliance with contractual terms for schedule, cost and technical performance in the areas of design, development and production;

(xxxiii) evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems in respect to: design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management and independent research and development;

(xxxiv) review and evaluate for technical adequacy the logistics support, maintenance, and modification programs accomplished by the contractor;

(xxxv) review and analyze contractor proposed engineering and design studies and make comments and recommendations to the contracting activity, as required;

(xxxvi) review Class I Engineering Change Proposals for need, technical adequacy of design, producibility, impact on quality, reliability, schedule and cost, and submit comments to contracting activity;

(xxxvii) review Class II Engineering Change Proposals for proper classification;

(xxxviii) assist in evaluation and make recommendations for acceptance or rejection of waivers and/or deviations;

(xxxix) monitor contractor Value Engineering Program;

(xl) perform engineering analyses of contractor cost proposals;

(xli) report inadequacies noted in specifications to contracting office;

(xlii) *Reserved;*

(xliii) review, evaluate, and approve plant or division-wide small and small disadvantaged business master subcontracting plans;

(xliv) obtain previously approved plan or, if none exists, assist the PCO in evaluating the contractor's company or division-wide small and small disadvantaged business subcontracting plans for its commercial products;

(xlv) assist and advise the PCO, upon request, on the evaluation of proposed small business and small disadvantaged business subcontracting plans, including documentation of compliance and performance with subcontracting plans under previous contracts;

(xlvi) insure contractor's compliance with small business and small disadvantaged business plans, and labor area concern contractual provisions; conduct periodic surveillance of compliance with small business and small disadvantaged business plans and labor surplus area provisions; maintain documentation of contractor's performance and compliance with such plans and provisions; and provide advice, counsel, and assistance to such firms;

(xlvii) perform quality assurance;
(xlviii) maintain surveillance of flight operations;
(xlix) assure contractor compliance with applicable safety requirements;
(l) Reserved;
(li) in connection with classified contracts, administer those portions of the Industrial Security Program designated as ACO responsibilities in

the ISR and ISM (See Appendix C, Industrial Security Regulation, DoD 5220.22-R, for partial listing of primary responsibilities (also see 1-320).);

(lii) make payments on assigned contracts (but see 20-706);

(liii) assign and perform supporting administration;

(liv) assure timely submission of required reports;

(lv) will advise and assist defense contractors regarding their priorities and allocations responsibilities and assist defense purchasing activities in processing requests for special assistance and for priority ratings for privately-owned capital equipment;

(lvi) process and execute novation and change of name agreements in accordance with Section XXVI, Part 4;

(lvii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements accelerating or decelerating contract delivery schedules;

(lviii) when authorized by the purchasing office, negotiate or negotiate and execute supplemental agreements providing for the de-obligation of unexpended dollar balances considered excess to known contract requirements;

(lix) determine adequacy of prime contractor's Disclosure Statements;

(lx) determine whether prime contractor's Disclosure Statements are in compliance with Section XV and Cost Accounting Standards; except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to 15-205.3 and 15-205.35.

(lxi) determine contractor compliance with Cost Accounting Standards and Disclosure Statements, if applicable; except that the Tri-Service Contracting Officer shall have full authority for determinations related to CAS 420 for those contractors with which the Tri-Service Contracting Officer negotiates advance agreements pursuant to 15-205.3 and 15-205.35.

(lxii) negotiate price adjustments and execute supplemental agreements pursuant to the Cost Accounting Standards clauses in 7-104.83;

(lxiii) perform post award surveillance of contractor progress toward demonstration of Cost/Schedule Control Systems to meet the Cost/Schedule Control Systems Criteria (see 7-104.87), provide assistance in the review and acceptance of contractors' Cost/Schedule Control Systems, and perform post acceptance surveillance to insure continuing operation of contractors' accepted systems;

(lxiv) when authorized by the purchasing office, issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from the amended shipping instructions;

(lxv) when authorized by the purchasing office, issue change orders and negotiate and execute resultant supplemental agreements under contracts for ship construction, conversion and repair;

(lxvi) issue contract modifications requiring the contractor to provide packing, crating and handling services on excess Government property. When the ACO determines it to be in the Government's best interests, he may secure such services from other than the contractor in possession of the property;

(lxvii) approve contractor acquisition/fabrication of special test equipment as provided in paragraph (b) of the clause in 7-104.26;

(lxviii) negotiate and execute contractual documents for settlement of cancellation charges under multi-year contracts;

(lxix) evaluate and monitor contractor's procedures for complying with the Restrictive Markings on Technical Data clause in 7-104.9(p);

(lxx) monitor the contractor's costs as set forth in 20-1000;

(lxxi) issue Notice of Intent to Disallow or Not Recognize Costs (see 15-206);

(lxxii) negotiate forward pricing rate agreements;

(lxxiii) analyze quarterly limitation on payments statements and recover overpayments from the contractor;

(lxxiv) when authorized by the contracting office, negotiate changes to interim billing prices;

(lxxv) when authorized by the contracting office, negotiate and definitize adjustments to contract prices resulting from exercise of an Economic Price Adjustment clause; and

(lxxvi) with the exception of changes in accounting and appropriation data which must be issued by the procuring activity, issue administrative changes (DAR 26-101(a)(i)).

Contracting functions not designated as contract administration functions shall remain the responsibility of the contracting office.

GENERAL PROVISIONS

Part 5—Contingent or Other Fees

1-500 Scope of Part. This Part sets forth the procedures to be followed and prescribes the form to be used for obtaining information concerning contingent or other fees paid by contractors for soliciting or securing contracts from the Department of Defense, including the Departments of the Army, the Navy, the Air Force, the Defense Supply Agency, the Defense Communications Agency, the Defense Nuclear Agency, and the Defense Mapping Agency.

1-501 Reserved.

1-502 Applicability. This Part applies to all contracts.

1-503 Covenant Against Contingent Fees Clause. Every contract shall contain the clause entitled "Covenant Against Contingent Fees" as set forth in 7-103.20.

1-504 Improper Influence. The term "*improper influence*" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

1-505 General Principles and Standards Applicable to the Covenant. The principles and standards set forth in this Part are intended to be used as a guide in the negotiation, award, administration or enforcement, of all contracts.

1-505.1 *Contingent Character of the Fee.* Any fee whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

1-505.2 *Exceptions to the Prohibition of the Covenant.* Excepted from the prohibition of the covenant are "bona fide employees" and "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

1-505.3 *Bona Fide Employee.* The term "*bona fide employee*", for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small-business concern, may employ an individual who represents other concerns. The factors set forth in 1-505.4, except (d) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

(a) A person may be a bona fide employee whether his compensation is on a fixed salary basis, or when customary in the trade, on a percentage, commission or other contingent basis or a combination of the foregoing.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

1-505.4 *Bona Fide Established Commercial or Selling Agency Maintained by the Contractor for the Purpose of Securing Business.* In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(a) The fees charged should not be inequitable and exorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation as for example, technical, consultant, or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(b) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(c) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.

(d) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(e) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized. However, any agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

1-505.5 *Fees for Information.* Contingent fees paid for "information" leading to obtaining a Government contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

1-506 Representation and Agreement Required From Prospective Contractors.

1-506.1 *General.* Except as provided in 1-506.3, each Department shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. When the SF 33 is not used, the clause in 7-2002.1 shall be included in the solicitation. The Contractor's Statement of Contingent or Other Fees (Standard Form 119) shall be used without deviation when either part of the inquiry provided in 7-2002.1 is answered in the affirmative. The form shall also be used without deviation in any other case when a Department desires to obtain such information. When further information is required, it may be obtained in any appropriate manner. Normally, submission of the form shall be required only of successful bidders and offerors, and contractors. (However, for Foreign Military Sales, see 6-1305.4.) |

1-506.2 *Interpretation of the Representation.*

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in 1-506.1, the definition of "bona fide employee" is as specified in 1-505.3.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retainer.

(c) If the representation would otherwise be answered in the affirmative the fact that the person employed or retained by the bidder or offerer or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answering in the negative.

1-506.3 *Exceptions.* The inquiry and agreement specified in 1-506.1 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(i) any advertised contract in which the aggregate amount involved does not exceed $25,000;

(ii) any negotiated contract in which the aggregate amount involved does not exceed $10,000;

(iii) any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed $25,000;

(iv) any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis;

(v) any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply;

(vi) contracts to be made in foreign countries; and

(vii) any other contracts, individually or by class, designated by the Secretary. (Reports of any such exceptions shall be filed promptly with the Administrator of General Services.)

1-507 Sales Commissions and Contingent Fees on Foreign Military Sales. See 6-1305.

1-508 Enforcement.

1-508.1 *General.* Each Department shall take the necessary steps to assure that the indicated proposed contractor has furnished a representation (negative or affirmative) and agreement required by 1-506.1.

(a) If the indicated proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted.

(b) If the indicated proposed contractor makes such representation in the affirmative, a completed Standard Form 119, in duplicate, shall be requested from him. In the case of formal advertising, the making of an award in accordance with established procedure of the Department concerned need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119, or the statement in lieu of the form, prior to acceptance of the offer or execution of the contract, unless the Chief of the Purchasing Office considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated proposed contractor fails to furnish the representation and agreement as required by 1-506.1, such failure shall be considered a minor informality and, prior to award, he shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish the representation and agreement after such opportunity has been afforded shall require rejection of the bid or offer.

1-508.2 *Failure or Refusal to Furnish Standard Form 119.* If the successful bidder or offeror or the contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof, as provided in 1-506.1 the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if the contract has been awarded or bid or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor.

1-508.3 *Misrepresentations or Violations of the Covenant Against Contingent Fees.* In case of misrepresentation concerning contingent fees, or violation or breach of the covenant against contingent fees, or some other relevant im-

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propriety, the Chief of the Purchasing Office shall take one or more of the following actions, or other action, as may be appropriate:

(i) if an award has not been made or bid or offer has not been accepted, determine whether the bid or offer should be rejected;

(ii) if an award has been made or bid or offer has been accepted, take action to enforce the covenant in accordance with its terms; i.e., as the best interest of the Government may appear, annul the contract without liability or recover the amount of the fee involved;

(iii) consider the bidder's or offeror's future eligibility as a contractor; or

(iv) consider referring the case to the Department of Justice.

1-508.4 *Reports.* A report shall be made in accordance with 1-608 when the Chief of the Purchasing Office recommends referral to the Department of Justice under 1-508.3(iv).

1-509 Preservation of Records.

(a) Each Department shall preserve as a permanent record for enforcement or report purposes the original executed copy of any representation and completed Standard Form 119, or statement in lieu of form, together with a record of any other pertinent data, including data as to action taken. There shall be no regular retirement of any Standard Form 119 maintained in this record by any procuring activity. However, in any case where the receipt of a new Standard Form 119 makes previously received information obsolete, the obsolete information may be destroyed.

(b) The second copy of Standard Form 119, or statement in lieu of form, shall be filed with and shall remain a part of the contract file.

Part 6—Debarment, Ineligibility, and Suspension

1-600 Scope of Part.

(a) This Part prescribes policies and procedures relating to the debarment and suspension of bidders, offerors, contractors, subcontractors, and other firms and individuals, and to ineligibility of bidders and offerors under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

(b) For the purpose of this Part, the authorized representatives of the Secretaries are:

(i) in the Army, an Assistant Judge Advocate General;
(ii) in the Navy, the Chief of Naval Material;
(iii) in the Air Force, the Deputy Chief of Staff, Research, Development and Acquisition;
(iv) in the Defense Logistics Agency, the Counsel;
(v) in the National Security Agency, The Director;
(vi) in the Defense Communications Agency, the Counsel;
(vii) in the Defense Nuclear Agency, the Director; and
(viii) in the Defense Mapping Agency, the Counsel.

1-601 Establishment and Maintenance of Records and Lists of Firms or Individuals Debarred, Ineligible or Suspended.

1-601.1 *General.* Each Department shall maintain a record of firms and individuals which it has debarred or suspended. Except as provided in this Part, contract awards of any character, including sales, will not be made to and bids or proposals will not be solicited from, existing contracts will not be extended with, and subcontracts will not be approved or consented to for listed firms and individuals.

1-601.2 *Information Contained in Departmental Records.* Each Departmental record shall show as a minimum the following information:

(i) names and addresses of those firms or individuals debarred, ineligible, or suspended (names will be set forth in alphabetical order with appropriate cross reference where more than one name is involved in a single action);
(ii) basis of authority for each action and a brief description of the violation charged;
(iii) extent of restrictions imposed; and
(iv) termination date for each debarred listing.

1-601.3 *Joint Consolidated List.* The Department of the Army is responsible for the issuance of a Joint Consolidated List (DA Circular 715-1; NAVMAT P-4386; AFR 70-23; MCO 4386.2J; DLA Regulation 4105.3; DCAI 260-145-3; DNAI 4105.1 of firms and individuals debarred, declared ineligible, or suspended under 1-603. The authorized representative for the Army (see 1-600(b)) shall be furnished by the authorized representative of each of the other Departments, not later than the third day of each month, the information set forth in 1-601.2, including additions, deletions, or modifications of information previously furnished, necessary for issuance of the Joint Consolidated List which shall be a composite of the information provided by the Departments. Each Department shall be responsible for determining the number of copies of the Joint Consolidated List required and for distributing the list within the Department. The Department of the Army will furnish copies to the Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management).

1-601.4 *Protection of Records.* Records relating to debarment and suspension shall be protected to prevent inspection of the contents by personnel who are not required to have access to such information. The reports made pursuant to 1-608 and all related internal correspondence shall be marked "For Official Use Only" unless the information warrants a security classification. The Joint Consolidated List shall not be considered part of the records relating to debarment and suspension which require protective markings.

1-601.5 *Limitation.* No firm or individual will be listed on a consolidated list for causes or under conditions other than those set forth in this Part.

1-601.6 *Inquiries from Debarred, Ineligible, or Suspended Individuals and Firms.*

(a) *Debarred and Suspended Firms and Individuals.* All inquiries relating to debarred or suspended firms and individuals shall be referred or forwarded to the authorized representative of the Secretary concerned.

(b) *Ineligible or Disqualified Firms or Individuals.* Inquiries from contractors or individuals listed as ineligible or disqualified by the Comptroller General and the Department of Labor under the Walsh-Healey or Davis-Bacon Acts shall be answered by indicating the nature of the prohibition, as shown on the consolidated list, and requesting that the inquirer communicate with the Wage and Hour Division, Department of Labor, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20210.

1-602 Reserved.

1-603 Grounds for Listing and Treatment To Be Accorded Listed Concerns.

1-603.1 *General.* Section 2393 of Title 10, U.S. Code, prohibits a Department from soliciting offers from, awarding contracts to, extending an existing contract with, or approving a subcontract award, when such approval is required, for any business concern or individual known to have been debarred or suspended by any other Federal agency, unless a compelling reason exists for taking such action. For the purpose of this Part, knowledge of the debarment or suspension of a concern or individual exists if there is actual knowledge of such status, as for example when such status is ascertained from the GSA Consolidated List of Current Administrative Debarments by Executive Agencies (GSA List) (see 1-607). Departments shall arrange for the distribution of sufficient copies of the current GSA List to personnel performing preaward surveys or the foregoing procurement functions to ensure compliance with section 2393.

1-603.2 *Review Procedures.* Prior to beginning a preaward survey or any of the procurement actions listed in 1-603.1, the GSA List and the Joint Consolidated List shall be reviewed to ascertain whether the business concern or individual involved is listed in a debarred, suspended or ineligible status. If a concern or individual appears only on the GSA List, or on the GSA List and the Joint Consolidated List, the applicable procurement action will not be taken unless a written determination is made by the Secretary concerned or his authorized representative that a compelling reason exists for the action. If the concern or individual appears only on the Joint Consolidated List, the exemption standards of 1-603.4 and 1-605 apply.

1-603.3 *Requests for Compelling Reason Determinations.* Requests for compelling reason determinations shall be forwarded for processing in accordance with Departmental procedures for implementing 1-603.4 and 1-605. When a Department makes such a determination, a notice describing the determination shall be forwarded to the GSA Office of Acquisition Policy. Some examples of circumstances that may constitute a compelling reason include (i) the supplies or services to be acquired are available only from the listed concern or individual; (ii) the urgency of the requirement dictates that the procurement action be taken; (iii) the concern or individual and a Department have entered an agreement covering the same events which resulted in the GSA listing that includes a decision by the Department not to debar or suspend the concern or individual; and (iv) for such other reasons related to the national defense which require continued business dealings with the listed concern or individual.

1-603.4 *Inclusion on the Joint Consolidated List.*

(a) A firm or individual may be listed for any of several reasons. The particular reason for listing determines the consequences thereof. The various types of listing and the treatment to be accorded each type are set forth below:

Type A includes debarments in any of the following categories:

(i) those listed by the Comptroller General pursuant to section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37) for violating the requirements of that Act;

(ii) those listed by the Comptroller General pursuant to section 3 of the Davis-Bacon Act (40 U.S.C. 276a-2(a)) for violating the requirements of that Act; and

(iii) those which the Secretary concerned or his authorized representatives has determined to debar for any of the causes and under all of the conditions set forth in 1-604.

Contracts shall not be awarded to, nor bids or proposals solicited from, nor invitations for bids or requests for proposals furnished to, concerns which are listed as Type A and which are debarred because of Walsh-Healey or Davis-Bacon violations (categories (i) and (ii) above). Contracts shall not be awarded to, nor bids or proposals solicited from nor invitation for bids or requests for proposals furnished to, nor subcontracts be approved for, concerns which are listed as Type A within category (iii) above, unless the Secretary concerned or his authorized representative determines it to be in the interest of the Government to make an exception for a particular procurement action, or unless the listing indicates that the debarment is not to apply to sales contracts or to procurement contracts (see 1–606).

Type B includes concerns which the Secretary of Labor has determined to be ineligible because they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)). Under that Act, procurement contracts in excess of $10,000 shall not be awarded the concerns under Type B listings for those materials, articles, or equipment with respect to which the concern has been found to be ineligible. However, contracts in any amount may be awarded, and bids or proposals may be solicited, for commodities with respect to which the concern has not been declared ineligible. In connection with ineligibility under the Walsh-Healey Act (Type B listing only), the name of an individual may be listed as affiliated with an ineligible firm. This listing is intended only to prevent such individuals from evading ineligibility merely by changing their business names and addresses. It does not prohibit other firms in which such individuals have an interest, and which are qualified manufacturers or regular dealers from receiving contracts subject to the Walsh-Healey Public Contracts Act.

Type C includes concerns which the appropriate Secretary, pursuant to section 3(b) of the Buy American Act (41 U.S.C. 10b(b)), has found to have failed to comply with the "Buy American Act" clause required for construction contracts (see 18–510). Contracts for the construction, alteration, or repair of public buildings or public works in the United States or elsewhere shall not be awarded to concerns under Type C listings nor shall bids or proposals for such work be solicited from such concerns. However, concerns under Type C listings may be awarded contracts and may be solicited for bids or proposals for other than the construction, alteration, or repair of public buildings or public works, unless listed under Type A.

Type D includes concerns which have been suspended under the conditions set forth in 1–605. Concerns under Type D listings shall not be awarded contracts or solicited for bids or proposals, or be approved for subcontracts subject to 1-603(c), except when the Secretary concerned or his authorized representative determines it to be in the best interest of the Government to make an exception for a particular procurement or where the listing indicates that the suspension does not apply to sales contracts or to procurement contracts (see 1–606).

Type E includes concerns which have been reported by the Secretary of Labor to have violated labor standards provisions of any of the following statutes: Anti-Kickback Act (48 Stat. 948) as amended (40 U.S.C. 276c); Contract Work Hours Standards Act (76 Stat. 357–360); National Housing Act (53 Stat. 804) as amended (12 U.S.C. 1703); Hospital Survey and Construction Act (60 Stat. 1040); Federal Airport Act (60 Stat. 170) as amended (49 U.S.C. 1101); Housing Act of 1949 (63 Stat. 413) (42 U.S.C. 1441); School Survey and Construction Act of 1950 (64 Stat. 967) (20 U.S.C. 251); Federal Civil Defense Act of 1950 (64 Stat. 1245) as amended; Defense Housing and Community Facilities and Services Act of 1951 (65 Stat. 293) as amended (42 U.S.C. 1591); and Area Redevelopment Act of 1961 (75 Stat. 47). Concerns under Type E listings shall not be awarded contracts which are subject to any of the foregoing statutes.

Type F includes concerns which have been debarred by the appropriate Secretary or the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity for noncompliance with the Equal Opportunity clause. Concerns under Type F listings may not be awarded contracts or be solicited for bids.

(b) Administration of current contracts in all phases may be continued, notwithstanding the listing of a contractor, unless otherwise directed by the Secretary concerned or his authorized representative. However, payment of all or part of funds due or to become due may be withheld when such action is determined to be in the best interest of the Government by the Secretary concerned or his authorized representative.

(c) When a listed concern is proposed as subcontractor, the contracting officer should decline to consent to or approve subcontracting with such concern in any instance in which consent or approval is required of the Government before the subcontract is placed (see 7-104.23 and 7-203.8), unless the Secretary or his authorized representative determines such placement to be in the best interest of the Government (see 1-603.2 and 1-603.3).

1-604 Administrative Debarment of Firms or Individuals (Type A). The Secretary of each Department, or his authorized representative (see 1-600(b)), except as limited below, is authorized to debar in the public interest a firm or an individual for any of the causes and under all of the conditions set forth below. Debarment of a firm or individual shall operate to debar such firm or individual throughout the Department of Defense. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment.

1-604.1 *Causes for Debarment*. The following are causes for debarment:

(i) conviction by or a judgment obtained in a court of competent jurisdiction for—

  (A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract, or any subcontract thereunder;

  (B) violation of the Federal antitrust statutes arising out of submission of bids or proposals to the Government; or

  (C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.

If the conviction or judgment is reversed on appeal, the debarment shall be removed upon receipt of notification thereof. The foregoing does not necessarily require that a firm or individual be debarred. The decision to debar is discretionary; the seriousness of the offense and all mitigating factors should be considered in making the decision to debar.

(ii) clear and convincing evidence of violation of contract provisions of a contract with the Government as set forth below, when the violation is of a character so serious as to justify debarment action—

(A) willful failure to perform in accordance with the specifications or delivery requirements in a contract (including violation of the Buy American Act with respect to other than construction contracts);

(B) a history of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; *provided*, that such failure or unsatisfactory performance is within a reasonable period of time preceding the determination to debar. (Failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment.);

(C) violation of the contractual provision against contingent fees; or

(D) violation of the Gratuities clause, as determined by the Secretary in accordance with the provisions of the clause.

(iii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify debarment; or

(iv) debarment for any of the above causes by some other executive agency of the Government. (Such debarment may be based entirely upon the record of facts obtained by the original debarring agency, or upon a combination of additional facts with the record of facts obtained by the original debarring agency.)

1-604.2 Period and Scope of Debarment.

(a) *Period of Debarment.* All debarments shall be for a reasonable specified period of time, commensurate with the seriousness of the cause therefor. As a general rule, a period of debarment shall not exceed three years. In the event debarment is preceded by suspension, consideration shall be given to such period of suspension in determining the period of debarment. Prior to the expiration of the debarment period, the Department or Agency which imposed the debarment should review all the facts and circumstances relating to the debarment. The debarment shall be removed at the expiration of the specified period unless it is determined that debarment for an additional period is required in order to protect the Government's interest. However, a debarment shall not be extended for an additional period solely on the basis of the facts and circumstances on which the initial debarment action was based. When debarment for an additional period is considered necessary, notice of the proposed debarment shall be furnished to the individual or firm concerned in accordance with 1-604.3. The debarment of an individual or firm may be modified by reducing the period thereof when the circumstances justify such action. With respect to debarment for violation of the Equal Opportunity clause (Type F), the debarment shall be removed prior to the expiration of the debarment period by the Secretary who imposed the debarment upon receipt of satisfactory evidence that corrective action has been taken.

(b) *Scope of Debarment.*

(1) Debarment may include all known affiliates of a concern or individual. Business concerns are considered affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or a third controls or has the power to control both.

(2) A decision to include known affiliates in a proposed debarment is an individual determination which must be made on a case by case basis.

(3) The fraud or criminal conduct of an individual may be imputed to the business firm with which he is connected when the impropriety involved was performed in the course of official duty or with the knowledge or approval of the business firm.

1-604.3 *Notice of Debarment.*

(a) The firm or individual and its known affiliates concerned shall be furnished with a written notice of the proposed debarment, stating as a minimum:

- (i) the fact that debarment is being considered;
- (ii) the reasons for the proposed debarment; and
- (iii) the period of time to be afforded to present information for consideration.

Information in opposition to a proposed debarment may be presented in person, in writing, or through representation. The period of time to be afforded to present information for consideration shall be limited to 30 days unless the subject of the proposed debarment requests additional time. When no additional time is requested, the debarment determination, including notice to the firm or individual and known affiliates involved, shall be completed within 90 days. If the subject of the proposed debarment requests additional time to present information, the 90 day period shall be extended commensurately. When no suspension is in effect under 1-605, the notice of proposed debarment shall state that no contracts will be awarded pending the debarment determination. If debarment is effected, the firm or individual shall be notified in writing within 10 days after determination of debarment has been made. This notice shall:

- (i) reference the earlier notice of proposed debarment;
- (ii) specify the reasons for debarment;
- (iii) state the period of debarment, including effective dates; and
- (iv) advise that the debarment is effective throughout the Department of Defense.

If, following the notice of proposed debarment, a determination is made that debarment will not be effected, the firm or individual shall be notified in writing accordingly.

(b) Copies of the notice of debarment and of any removals from debarment prior to termination of the specified period shall be furnished to the General Services Administration.

(c) The notices referred to in (a) and (b) above shall be sent by certified mail return receipt requested.

1-605 Suspension of Firm or Individual. Suspension of a contractor, subcontractor, bidder, or offeror is a drastic action which must be based upon adequate evidence rather than mere accusation. In assessing adequate evidence, consideration should be given to how much credible information is available, its reasonableness in view of surrounding circumstances, corroboration or lack thereof as to important allegations, and inferences which may be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. Placing the name of an individual or firm on the consolidated list will be for the purpose of protecting the interest of the Government and not for punishment. Suspension is an administrative determination which may be modified when determined to be in the interest of the Government.

1-605.1 *Causes for Suspension.* The Secretary or his authorized representative (see 1-600(b)) may, in the interest of the Government, suspend a firm or individual:

- (i) suspected, upon adequate evidence, of—
  - (A) commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract or subcontract;
  - (B) violation of the Federal antitrust statutes arising out of the submission of bids and proposals to the Government; or
  - (C) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor or subcontractor.
- (ii) for other cause of such serious and compelling nature, affecting responsibility as a Government contractor, or subcontractor, as may be determined by the Secretary of the Department concerned to justify suspension.

Suspension of a firm or individual by the Secretary or his authorized representative shall operate to suspend such firm or individual throughout the Department of Defense.

1-605.2 *Period and Scope of Suspension.*

(a) *Coordination with Department of Justice.* Upon suspension, notice shall be furnished in accordance with 1-605.3. Except as provided in (b) below, when a request for a hearing is received, the formal advice of the Department of Justice shall be solicited concerning the possible impact of release of evidentiary material on possible civil or criminal action against the firm or individual. (If such advice is orally given, a request will be made that the Department of Justice promptly confirm it in writing.) Based upon this advice, the Secretary or his authorized representative shall determine whether, and to what extent, a hearing should be held.

(1) If a hearing is granted, it will be held not later than 20 days after receipt of the request. The Secretary or his authorized representative shall promptly decide after the hearing whether to continue or terminate the suspension and notify the firm or individual accordingly.

(2) If it is determined, based upon the advice received from the Department of Justice, that to hold a hearing would adversely affect possible civil or criminal prosecution against the firm or individual, this determination will be reduced to writing and made a part of the formal record. Notice shall then be furnished to the firm or individual within 20 days after receipt of the request for a hearing that substantial interests of the Government would be prejudiced if a hearing were held but that any information or argument in opposition to the suspension may be presented in person, in writing, or through representation. Any information or argument submitted will be promptly considered by the Secretary or his authorized representative and, if such action is deemed warranted, the suspension shall be terminated.

(b) *Exceptions:*

(1) When the basis for suspension is an outstanding indictment against the firm or individual the granting of a hearing is not required and it is unnecessary to consult the Department of Justice.

(2) When the basis for suspension does not involve possible civil or criminal prosecution against the firm or individual, it is unnecessary to consult the Department of Justice and a hearing shall be granted if requested.

(c) *Period of Suspension.* All suspensions shall be for a temporary period pending the completion of investigation and such legal proceedings as may ensue. In the event prosecutive action is not initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General requests continuance of the suspension. If such a request is received, the suspension may be continued for an additional six months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12 month period. In no event will a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. When prosecutive action is initiated, the suspension may continue until the legal proceedings are completed. Upon removal of a suspension, consideration may be given to debarment in accordance with 1-604.

(d) *Scope of Suspension.* The scope of suspension shall be the same as that for debarment (see 1-604.2(b)).

1-605.3 *Notice of Suspension.* Upon suspension, the firm or individual concerned shall immediately be furnished a written notice of the suspension by the Secretary concerned or his authorized representative. The notice of suspension shall be sent by certified mail return receipt requested and state that:

- (i) the suspension is based on adequate evidence that the firm or individual has committed irregularities of a serious nature in business dealings with the Government, or that the suspension is based on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government, together with a description of the nature of those irregularities, in general terms, without disclosing the Government's evidence;
- (ii) the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;
- (iii) bids and proposals will not be solicited from the firm or individual and if received will not be considered, and awards of contracts may not be made unless it is determined to be in the best interest of the Government by the Secretary or his authorized representative to do so; and
- (iv) the suspension is effective throughout the Department of Defense; and
- (v) a request for a hearing will be considered or a reference will be made to an indictment, as appropriate.

1-606 Limited Debarment or Suspension. When it is determined to debar or suspend a concern pursuant to 1-604.1 or 1-605.1, the Secretary or his authorized representative shall decide whether the debarment or suspension should extend to procurement contracts or to sales contracts, or both. If the debarment or suspension is limited to procurement contracts or to sales contracts, the listing should so indicate. Likewise, a decision may be made to except from an administrative debarment or suspension a particular commodity or commodities or a particular division or subsidiary or other appropriate organizational element of the contractor when such action is considered to be in the best interests of the Government.

1-607 Interchange of Debarment Information.

(a) The General Services Administration (see FPR 1-1.6) compiles a combined list of debarments, including the basis therefor, from the notifications of debarments furnished by the Departments and executive agencies. A copy of the list is distributed to all executive agencies, including the Military Departments.

(b) Each Department shall notify the General Services Administration of the name and address of its central office where debarment information should be sent.

(c) Each Department shall check the list of debarred bidders furnished by the General Services Administration, in accordance with the provisions of 1-603.

(d) The General Services Administration has agreed to furnish to the Departments upon specific request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in 1-604.1 (subsection 207.05a of GSA Regulation 1-II) or under the Buy American Act. If desired, direct inquiry concerning any debarment case may be made to the agency which originated the action.

1-608 Reporting.

1-608.1 *Situations Where Reports Are Required.* A report incorporating the information required by 1-608.2 shall be prepared when:

(i) a contractor has committed, or is suspected of having committed, any of the acts described in 1-604.1 and 1-605.1;
(ii) a report is required by 1-111.1 (this does not concern reports required to be submitted to the Department of Justice on identical bids under Executive Order 10936, dated 24 April 1961 (see 1-114));
(iii) a report is required by 1-508.4 (contingent fees);
(iv) a report is required by 8-207 (termination settlements);
(v) Buy American Act violations are suspected (see 18-510); or
(vi) an individual or firm is suspected of attempting to evade the prohibitions or debarments or suspensions imposed under this Regulation by changes of address, multiple addresses, formation of new companies, or by other devices.

1-608.2 *Contents of Reports.* Each report prepared pursuant to 1-608 shall include substantially the following information, where available:

(i) name and address of the bidder or offeror, contractor, or subcontractor;
(ii) names of the principal officers, partners, owners, or managers;

(iii) all known affiliates, subsidiaries, or parent firms, and the nature of the affiliation;

(iv) description of the contract or contracts concerned, including the contract number, and all office identifying numbers or symbols, the amount of each contract, the degree of completion, the amount paid the contractor and the amount still due, and the percentage of work to be completed;

(v) the status of vouchers;

(vi) whether the contract has been assigned pursuant to the Assignment of Claims Act, and if so assigned, the name and address of the assignee and a copy of the assignment;

(vii) whether any other contracts are outstanding with the contractor or any of his affiliates, and if so, the amount of such contracts, whether they are assigned pursuant to the Assignment of Claims Act, and the amounts paid or due on such contracts;

(viii) a complete summary of all pertinent evidence;

(ix) a recommendation as to the administration of all current contracts with a full explanation of the reason for such recommendation, or if no recommendation is made, the reason therefor;

(x) an estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate;

(xi) the comments and recommendations of the contracting officer and of each successive echelon as to (A) whether the contractor should be suspended or debarred, (B) whether any limitations should be applied to such action, and (C) the period of any debarment; and

(xii) as an inclosure, a copy of the contract (or contracts) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation.

1-608.3 *Addresses and Copies of Reports*. Reports shall be submitted in three complete copies, including inclosures, to the authorized representatives of the Secretaries concerned (see 1-600(b)). Additional copies without inclosures may be required by Departmental procedures for other addressees.

1-609 Procurement Outside United States.

1-609.1 *General*. The foregoing provisions of this Part shall be applied by overseas commanders to procurement outside the United States and its possessions, whenever possible, and as modified by the following provisions, with due consideration to laws or customs of the foreign countries concerned.

1-609.2 *Responsibilities and Area Coverage*. The Commander in Chief, United States European Command (CINCEUR), the Commander in Chief, Pacific (CINCPAC) and the Commander in Chief, Southern Command (USCINCSO), or the Commanders of a component command which each of these unified commanders may designate, shall establish and maintain a consolidated list of offshore suppliers to whom contracts will not be awarded and from whom bids or proposals will not be solicited. The CINCEUR consolidated list will include names in the North Atlantic and Mediterranean areas, including all of Europe, North Africa, and the Middle East. The CINCPAC consolidated list will include names in the Far East and Pacific Ocean areas, excluding the United States and its possessions. The USCINCSO consolidated list will include names in Central and South America, excluding possessions. All other overseas commanders shall utilize and contribute to such lists as appropriate to their geographical location or areas in which they award contracts. Lists shall not be established or maintained except as provided above.

1-609.3 *Information Contained on Overseas Lists.* The list shall show as a minimum the following information:

(i) names and addresses of those firms or individuals to whom contracts shall not be awarded and from whom bids or proposals shall not be solicited (Names will be set forth alphabetically with appropriate cross reference where more than one name is involved in a single action or where a parent firm or individual in one country is known to control subsidiaries, branches, or agencies in the same or other countries.);
(ii) basis or authority for each action;
(iii) extent of restrictions imposed;
(iv) termination date for each debarred listing; and
(v) originating activity, component, or agency.

1-609.4 *Protection of Overseas Lists and Records.* See 1-601.4.

1-609.5 *Maintenance and Distribution of Lists.* The lists shall be kept current by issuance of notices of additions or deletions and by periodic reprinting. Copies of the lists shall be distributed to contracting officers as the unified commanders and their component commanders direct. CINCEUR, CINCPAC, and CINCSOUTH shall exchange lists directly. Copies shall also be furnished the Assistant Secretary of Defense (Installations and Logistics), the Assistant Secretary of Defense (International Security Affairs), and the authorized representative of the Secretaries (see 1-600(b)).

1-609.6 *Basis of Addition of Firms and Individuals to Lists.* In addition to the names of offshore firms or individuals which may be included on the lists as falling into the categories outlined in 1-603.4, the names of firms or individuals abroad shall be included on the list in the following additional categories:

(i) those who are "designated nationals" under the Foreign Assets Control Regulations;
(ii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to have engaged in improper East-West trade activity;
(iii) those found by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative to be ineligible because they do not meet the political or security criteria;
(iv) those found by the United States Diplomatic Mission or a Country Team (consisting of members of the United States Diplomatic Mission in the country or countries in which the firms or individuals are located) to be ineligible because they do not meet the labor-political criteria; and
(v) those who for other causes of a serious and compelling nature are so designated by the unified commander.

1–609.7 *Treatment To Be Accorded Firms or Individuals in Debarred or Ineligible Status.* The provisions of 1–603 shall be complied with, if applicable. In addition, contracts shall not be awarded to, nor shall bids or proposals be solicited from or furnished to firms or individuals abroad which come within the categories in 1–609.6. With respect to 1–609.6(i), an exception may be made only by the Secretary of the Treasury. With respect to 1–609.6 (ii), (iii), and (iv), an exception may be made by the Assistant Secretary of Defense (International Security Affairs) or his authorized representative.

1–609.8 *Causes and Conditions For Which Unified Commanders May Place Names on the Consolidated List.* CINCEUR, CINCPAC, and CINCSOUTH, or their designated component commanders are authorized to place on the list names of firms or individuals doing business within the areas for which they are responsible, for any of the causes and under the conditions set forth in 1–609.6 and 1–609.7. Oversea commanders or unified commanders overseas other than CINCEUR, CINCPAC, and CINCSOUTH, are similarly authorized to designate firms or individuals in their command areas and shall promptly notify CINCEUR, CINCPAC, or CINCSOUTH, as appropriate, of such action, furnishing the information required by 1–609.3. CINCEUR, CINCPAC, or CINCSOUTH shall add the names to his consolidated list. The listing shall operate to deny contracts to such firms or individuals throughout the Department of Defense. Unified commanders shall be notified of the action based on causes and under conditions set forth in 1–609.6 and 1–609.7 through the "Economic Defense List," transmitted by the Department of Commerce through State Department channels, which contains the names of firms and individuals affected or by direct communication from the Office of the Assistant Secretary of Defense (International Security Affairs).

1–609.9 *Liaison With United States Diplomatic Missions.* The Chief of the United States Diplomatic Mission, or such attache or other officer as he directs, in the country where the firm or individual concerned is located, shall be notified of actions contemplated under the foregoing paragraphs which may have important political significance. In cases of contemplated action against a branch or subsidiary firm or agency in one or more countries, the Chief of the United States Diplomatic Mission in each country, including that in which the parent or principal is located, will be notified.

1–610 Use of Lists.

(a) Due to the length of the lists, the numerous revisions, and the distances involved, as well as the infrequent contracting by offices with suppliers outside their respective areas, the United States, CINCEUR, CINCPAC, and CINCSOUTH consolidated lists of ineligible, debarred, and suspended bidders shall not be distributed to contracting officers outside the area covered by the respective lists. However, no contracts shall be awarded by contracting officers to suppliers without ascertaining that the names of the firms or individuals involved do not appear on the consolidated list for the geographical area in which the contractor is located. All lists shall be held for reference in each of the Departments, and in offices designated by CINCEUR, CINCPAC, and CINCSOUTH, and shall be utilized in accordance with procedures established by them.

(b) When a contracting officer becomes aware that a prospective contractor proposes to furnish products of a concern that has been placed on an overseas list in accordance with 1-609.6(i), (iii), or (v), the matter shall be referred to the authorized representatives of the Secretaries concerned.

GENERAL PROVISIONS

Part 7-Small Business and Small Disadvantaged Business Concerns

1-700 Scope of Part. This Part, which applies only in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands, implements the Armed Services Procurement Act, as amended (10 U.S.C. 2301), and the Small Business Act as amended (15 U.S.C. 631 et seq.) and sets forth policy and procedures governing (i) contract awards to small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals, (ii) relationships with the Small Business Administration (SBA), (iii) small business set-asides, (iv) contracting with the SBA under Section 8(a) of the Small Business Act, and (v) subcontracting with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

1-701 Definitions. The definitions of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals are promulgated by the Small Business Administration. Unless otherwise specified, the term small business concern as used herein shall also mean small business concerns owned and controlled by socially and economically disadvantaged individuals. As used throughout this Part, the following terms shall have the meanings set forth below. When a Department is in doubt as to the specific small business definition that should apply to a particular acquisition, advice from the Small Business Administration office having jurisdication over the geographical area in which the contracting officer is located shall be requested to assist in making a determination.

1-701.1 *Small Business Concern.*

(a) (1) *General Definition.* A small business concern is a concern that is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and with its affiliates, can further qualify under the criteria set forth in (2) and (3) below. "*Concern*" means any business entity organized for profit with a place of business in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of an acquisition of a product or service that could be classified into two or more industries with different size standards, the applicable size standard is that for the industry whose products or services account for the greatest proportion of the contract price.

(2) *Industry Small Business Size Standards*. In addition to being independently owned and operated, and not dominant in the field of operation in which it is bidding on Government contracts, a small business concern in order to qualify as such must meet the criteria established for the industries set forth below. "*Annual receipts*" means the gross income (less returns and allowances, sales of fixed assets and interaffiliate transactions) of a concern (and its affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and in the case of a concern subject to U.S. Federal income taxation reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than one year, its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has been in business less than 3 years, its average annual receipts for the purpose of a size standard based on 3 years' receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's annual receipts to include the affiliate's receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such a concern had been an affiliate during a portion of the applicable accounting period. In computing the annual receipts, or average annual receipts, of a concern (not including its affiliates) that has 50 percent or more of its annual receipts attributable to business activity within one of the States and nonforeign areas set forth below, such annual receipts, or average annual receipts shall be reduced by the percentage prescribed for such State or area.

	Percent
Alaska	25.0
Hawaii	12.5
Virgin Islands	10.0
Puerto Rico	7.5
Guam	7.5

a. Construction Industries. For construction, alteration, or repair (including painting and decorating), of buildings, bridges, roads or other real property, as classified in Division C, contract construction, of the Standard Industrial Classification Manual, as amended, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $12 million; *provided*, however, that if 75 percent or more (by value) of the work called for by the contract is classified in one of the industries, subindustries, or class of products in the schedule below, it is small if it does not exceed the size standards established therein for such industry. For dredging, the average annual receipts of the concern and its affiliates for its preceding three fiscal years must not exceed $9.5 million and it must perform the dredging of at least 40% of the yardage advertised i the plans and specifications with dredging equipment owned by the bidder or ol tained from another small business dredging concern.

SCHEDULE H - Annual Receipts Size Standards For Purpose of Bidding For Construction Contracts - Special Trade Contractors

Census Classification Code	*Industry, Subindustry, or Class of Products*	*Average 3-Year Annual Receipts Size Standard (maximum, in millions)*
1711	Plumbing, Heating (Except Electric), and Air Conditioning	$5
1721	Painting Paper Hanging, and Decorating	$5
1731	Electrical Work	$5
1741	Masonry, Stone Setting, and Other Stonework	$5
1742	Plastering, Drywall, Acoustical and Insulation Work	$5
1743	Terrazzo, Tile, Marble, and Mosaic Work	$5
1751	Carpentering and Flooring	$5
1752	Floor Laying and Other Floor Work, Not Elsewhere Classified	$5
1761	Roofing and Sheet Metal Work	$5
1771	Concrete Work	$5
1781	Water Well Drilling	$5
1791	Structural Steel Erection	$5
1793	Glass and Glazing Work	$5
1794	Excavating and Foundation Work	$5
1795	Wrecking and Demolition Work	$5
1796	Installation or Erection of Building Equipment, Not Elsewhere Classified	$5
1799	Special Trade Contractors, Not Elsewhere Classified	$5

b. Manufacturing Industries.

1. Food Canning and Preserving Industry—For food canning and preserving, the number of employees of the concern and its affiliates must not exceed 500 persons, exclusive of "agricultural labor" as defined in 26 U.S.C. 3306(k).

2. Refined Petroleum Products—Any concern bidding on a contract for a refined petroleum product other than Paving mixtures and blocks, Asphalt felts and coatings, Lubricating oils and greases, or Products of petroleum and coal, not elsewhere classified, is classified as small if (1)(i) its number of employees does not exceed 1,500 persons; (ii) it does not have more than 50,000 barrels-per-day crude oil or bona fide feed stock capacity from owned or leased facilities or from facilities made available to such concern under an arrangement such as, but not limited to, an exchange agreement (except one on a refined product for refined product basis), or a throughput or other form of processing agreement, with the same effect as though such facilities had been leased; and (iii) the product to be delivered in the performance of the contract will contain at least 90% components refined by the bidder from either crude oil or bona fide feed stocks: *Provided*, however, that a petroleum refining concern which meets the requirements in subdivisions (i) and (ii) of this subparagraph may furnish the product of a refinery not qualified as small business if such product is obtained pursuant to a bona fide exchange agreement, in effect on the date of the bid or offer, between the bidder or offeror and the refiner of the product to be delivered to the Government which requires exchanges in a stated ratio on a refined petroleum product for a refined petroleum product basis, and precludes a monetary settlement, and that the products exchanged for the products offered and to be delivered to the Government meet the requirement in subdivision (iii) of this subparagraph: And, *provided further*, that the exchange of products for products to be delivered to the Government will be completed within 90 days after expiration of the delivery period under the Government contract and that any product furnished pursuant to a bona fide exchange agreement must be for delivery in the same Petroleum Administration for Defense (PAD) District as that in which the small refinery is located; or (2) its number of employees does not exceed 500 persons and the product to be delivered to the Government has been refined by a concern which qualifies under subparagraph (1) of this paragraph. The proviso that the product to be delivered in the performance of the contract will contain at least 90 percent components refined by the bidder from either crude oil or bona fide feedstocks contemplates that, in accomplishing such refining, the bidder will utilize his own employees and facilities which he owns or obtains under a bona fide lease as distinguished from any other arrangement having the same effect as a lease. The proviso permitting a concern which meets the requirements in subdivision (1)(i) and (ii) of this paragraph to furnish the product of a refinery not qualified as a small business if such product is obtained pursuant to a bona fide exchange agreement which meets prescribed requirements, contemplates that the product exchanged by the bidder for the product to be furnished, shall have been refined by the bidder utilizing only his own employees and his own facilities or facilities obtained through a bona fide lease.

3. Pneumatic Tires—For passenger cars, motorcycles, truck, bus, and off-the-road pneumatic tires, a concern is classified as small when bidding on a contract for the above listed items: *Provided*, that (i) the value of the above types of pneumatic tires which it manufactured in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture, (ii) the value of these pneumatic tires which it manufactured worldwide during the preceding calendar year was less than 5% of the value of all such tires manufactured in the United States during said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold worldwide during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period. This section does not apply to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, is considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

4. Passenger Cars—A company is classified as small if it is bidding on a contract for passenger cars: *Provided*, that (i) the value of the passenger cars which it manufactured or otherwise produced in the United States during the preceding calendar year is more than 50% of the value of its total worldwide manufacture or production of such passenger cars, (ii) the value of the passenger cars which it manufactured or otherwise produced during the preceding calendar year was less than 5% of the total value of all such cars manufactured or produced in the United States during the said period, and (iii) the value of the principal products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10% of the total value of such products manufactured or otherwise produced or sold in the United States during said period.

5. Rebuilding of Machinery on a Factory Basis—Any concern bidding on a contract for the rebuilding of machinery or equipment on a factory basis is classified as small business *provided*, the purpose of the rebuilding is to restore such machinery or equipment to as serviceable and as like new condition as possible and the number of employees does not exceed the number of employees specified for the classification code applicable to the manufacturer of the original item. The size standard is not limited to concerns who are manufacturers of the original item but is applicable to all bidders or offerors. The term "rebuilding on a factory basis" as used in this subsection does not include ordinary repair services such as those involving minor repair and/or preservation operations.

6. Fluid Milk — Any concern bidding on a contract for fluid milk classified in SIC Code 2026 is small if its number of employees, exclusive of home delivery routemen, does not exceed 500 persons.

7. Manufacturing Industries Listed in 1–701.5 — For a product classified within an industry listed in 1–701.5, the number of employees of the concern and its affiliates must not exceed the small business size standard established therein for that industry.

8. Manufacturing Industries Not Listed in 1–701.5 — For a product classified within an industry not set forth in this paragraph or in 1–701.5, the number of employees of the concern and its affiliates must not exceed 500 persons.

c. Nonmanufacturing Industries. For a product not manufactured by the concern submitting a bid or proposal, other than for a construction or service contract, the number of employees of that concern must not exceed 500 persons and, in the case of an acquisition set aside for small business (see 1-706), the concern must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, Puerto Rico, or the Trust Territory of the Pacific Islands by small business concerns. A small nonmanufacturer responding to small business-small purchase set-asides (1-702(c)) may furnish any domestically produced or manufactured product. In all other instances, a small nonmanufacturer responding in its own name to an unrestricted acquisition and offering the product of a domestic large business shall be eligible for COC consideration. If the product of a large business is supplied, that product and the responsibility of the manufacturer must be acceptable to the contracting office. The SBA certifies the responsibility of the small business dealer, not the responsibility of the manufacturer. However, in the event of equal low bids (2-407.6), preference shall be given to the company offering the product of a small business. On small business set-asides, if the goods to be furnished are wool, worsted, knitwear, duck, or webbing, nonmanufacturers (dealers and converters) shall furnish products that have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher. On small business set-asides, if the product to be furnished is thread, nonmanufacturers (dealers and converters) shall furnish thread that has been finished by a small finisher. (Finishing of thread is defined as all "dyeing, bleaching, glazing, mildew proofing, coating, waxing, and other applications required by the pertinent specification, but excluding mercerizing, spinning, throwing, or twisting operations.")

d. Service Industries.

1. Any concern bidding on a contract for services not elsewhere defined in this Section is classified as small if the average annual receipts of the concern and its affiliates for the preceding three fiscal years do not exceed $2 million.

2. Any concern bidding on a contract for engineering services (other than marine engineering services), is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million.

3. Any concern bidding on a contract for motion picture production or motion picture services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $8 million.

4. Any concern bidding on a contract for naval architectural and marine engineering services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $9 million.

5. Any concern bidding on a contract for janitorial and custodial services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4.5 million.

6. Any concern bidding on a contract for base maintenance is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7.5 million. Base maintenance is defined as follows:

> "*Base Maintenance*" means furnishing at an installation within the several States, Commonwealth of Puerto Rico, Virgin Islands, the Trust Territory of the Pacific Islands or the District of Columbia three or more services which may include but are not limited to such maintenance activities as janitorial and custodial services, protective guard services, commissary services, base housing maintenance, fire prevention services, refuse collection services, safety engineering services, messenger services, grounds maintenance and landscaping services, and air conditioning and refrigeration maintenance; *provided*, however, that whenever the contracting officer determines prior to the issuance of bids that the estimated value of one of the foregoing services constitutes more than 50% of the estimated value of the entire contract, the contract shall not be classified as base maintenance but in the industry in which such services is classified.

7. Any concern bidding on contracts for marine cargo handling services is classified as small if its annual receipts do not exceed $7.5 million for the preceding three fiscal years.

8. Any concern bidding on a contract for food services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $5.5 million.

9. (i) Any concern bidding on a contract for laundry including linen supply, diaper services, and industrial laundering, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

(ii) Any concern bidding on a contract for cleaning and dyeing, including rug cleaning services, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $1.5 million.

10. Any concern bidding on a contract for computer programming services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

11. Any concern bidding on a contract for flight training services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

12. Any concern bidding on a contract for motorcar rental and leasing services or truck rental and leasing services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

13. Any concern bidding on a contract for tire recapping services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million. This section applies only to acquisitions requiring the services of tire retreading and repair shops (Standard Industrial Classification Industry No. 7534, Tire Retreading and Repair Shops) and not to acquisitions for the repairing and/or retreading of pneumatic aircraft tires which, by reason of the extent and nature of the equipment and operations required, are considered for size standard purposes to be manufactured within the meaning of Standard Industrial Classification Industry No. 3011, Tires and Inner Tubes.

14. Any concern bidding on a contract for data processing services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $4 million.

15. Any concern bidding on a contract for computer maintenance services is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $7 million.

16. Any concern bidding on a contract for services requiring the use of one or more helicopters or fixed-wing aircraft is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $3.5 million.

17. Any concern bidding on a contract for refuse collection services, with or without disposal, is classified as small if its average annual receipts for its preceding three fiscal years do not exceed $3.5 million.

18. Any concern bidding on a contract for protective services is classified as small if its average annual receipts for its preceding 3 fiscal years do not exceed $4.5 million.

e. Transportation Industries.

1. General — Except as provided in *2* and *3* below, for passenger or freight transportation, the number of employees of the concern and its affiliates must not exceed 500 persons.

2. Air Transportation — For air transportation, the number of employees of the concern and its affiliates must not exceed 1,500 persons.

3. Trucking (Local and Long Distance), Warehousing, Packing and Crating, and/or Freight Forwarding — For trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, the annual receipts of the concern and its affiliates must not exceed $7 million. No such concern, however, will be denied small business status for the purpose of Government acquisition solely because of its contractual relationship with a large interstate van line if the concern's annual receipts have not exceeded $7 million during its most recently completed fiscal year.

f. Research, Development or Testing Industries. For research, development, or testing, which requires delivery of a manufactured product, a concern must (i) qualify as a small business manufacturer within the meaning of *b* above for the industry in which the product is classified, or (ii) qualify as a small business nonmanufacturer within the meaning of *c* above. For research, development, or testing, which does not require delivery of a manufactured product, the number of employees of the concern and its affiliates must not exceed 500 persons.

(3) *Small Business Subcontractors.* In connection with subcontracts of $10,000 or less, any concern will be considered a small business concern if it, with its affiliates, employs not more than 500 employees. In connection with subcontracts exceeding $10,000, any concern shall be considered a small business concern if it qualifies as such under (1) and (2) above.

(b) *Dominance in Field of Operations.* A concern "is not dominant in its field of operations" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration is given to all appropriate factors including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

(c) *Affiliates.* Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships: *Provided*, however, that restraints imposed on a franchisee by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(d) *Number of Employees.* In connection with the determination of small business status, "*number of employees*" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "*number of employees*" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's number of employees, to include the affiliate's number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(e) *Small Business Certificate*. A small business certificate is a certificate issued by SBA pursuant to the authority contained in sections 3 and 8(b)(6) of the Small Business Act certifying that the holder of the certificate is a small business concern for the purpose of Government acquisition and in accordance with the terms of the certificate.

1-701.2 Small Disadvantaged Business Concern. As used throughout this Part, a small disadvantaged business concern means a small business concern which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of such individuals.

(a) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(b) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the SBA shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individuals.

1-701.3 Established Supplier. An "established supplier" of an item is a concern which has supplied the items satisfactorily to one or more Departments, or is a concern with which mobilization planning is in effect.

1-701.4 *Potential Supplier*. A "potential supplier" of an item is a concern which is a source of supplies, but, which is not an established supplier.

1-701.5 *Manufacturing Industry Employment Size Standards*. The Standard Industrial Classification Manual (1972 Edition) index provides an alphabetical listing of products and the industry with which the product is associated, which includes references to the Classification Code set forth below.

Classification Code	Industry	Employment Size Standard (Number of Employees)*
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2026	Milk, fluid	500
2032	Canned specialties	1000
2043	Cereal breakfast foods	1000
2046	Wet corn milling	750
2052	Cookies and crackers	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2076	Vegetable oil mills, except corn, cottonseed and soybean	1000
2079	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750
2085	Distilled, rectified, and blended liquors	750
	MAJOR GROUP 21—TOBACCO MANUFACTURERS	
2111	Cigarettes	1000
	MAJOR GROUP 22—TEXTILE MILL PRODUCTS	
2211	Broad woven fabric mills, cotton	1000
2261	Finishers of broad woven fabrics of cotton	1000
2271	Woven carpets and rugs	750
2295	Fabrics, not rubberized	1000
2296	Tire cord and fabric	1000
	MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS	
2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750
	MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS	
2812	Alkalies and chlorine	1000
2813	Industrial gases	1000
2816	Inorganic pigments	1000
2819	Industrial inorganic chemicals, not elsewhere classified	1000
2821	Plastics materials, synethtic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1000
2823	Cellulose man-made fibers	1000
2824	Synthetic organic fibers, except cellulosic	1000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2865	Cyclic (coal tar) crudes and cyclic intermediates, dyes, and organic pigments (lakes and toners)	750
2869	Industrial organic chemicals, not elsewhere classified	1000
2873	Nitrogenous fertilizers	1000
2892	Explosives	750
	MAJOR GROUP 29—PETROLEUM REFINING AND RELATED INDUSTRIES*	
2952	Asphalt felts and coatings	750
	MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTICS PRODUCTS	
3011	Tires and innertubes	1000
30111	Passenger car and motorcycle pneumatic tires (casings) ****	
30112	Truck and bus (and off-the-road) pneumatic tires****	
3021	Rubber and plastics footwear	1000
3031	Reclaimed rubber	750

See footnotes at end of list.

MAJOR GROUP 32—STONE, CLAY, GLASS AND CONCRETE PRODUCTS

Classification Code	Industry	Employment Size Standard (Number of Employees)*
3211	Flat glass	1000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

Classification Code	Industry	Employment Size Standard (Number of Employees)*
3312	Blast furnaces (including coke ovens), steel works, and rolling mills	1000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1000
3316	Cold rolled sheet, strip and bars	1000
3317	Steel pipe and tubes	1000
3331	Primary smelting and refining of copper	1000
3332	Primary smelting and refining of lead	1000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3353	Aluminum sheet, plate and foil	750
3354	Aluminum extruded products	750
3355	Aluminum rolling and drawing, not elsewhere classified	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1000
3398	Metal heat treating	750
3399	Primary metal industries, not elsewhere classified	750

MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT MACHINERY AND TRANSPORTATION EQUIPMENT

Classification Code	Industry	Employment Size Standard (Number of Employees)*
3411	Metal cans	1000
3431	Enameled iron and metal sanitary ware	750
3482	Small arms ammunition	1000
3483	Ammunition except for small arms, not elsewhere classified	1500
3484	Small arms	1000

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Classification Code	Industry	Employment Size Standard (Number of Employees)*
3511	Steam, gas, and hydraulic turbines; and turbine-generator set units	1000
3519	Internal combustion engines, not elsewhere classified	1000
3531	Construction machinery and equipment	750
3537	Industrial trucks, tractors, trailers and stackers	750
3562	Ball and roller bearings	750
3572	Typewriters	1000
3573	Electronic computing equipment	1000
3574	Calculating and accounting machines, except electronic computing equipment	1000
3585	Air conditioning and warm air heating equipment and commercial and industrial refrigeration equipment	750

See footnotes at end of list.

Classification Code	Industry	Employment Size Standard (Number of Employees)*
	MAJOR GROUP 36—ELECTRICAL AND ELECTRONIC MACHINERY, EQUIPMENT, AND SUPPLIES	
3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1000
3633	Household laundry equipment	1000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records and prerecorded magnetic tapes	750
3661	Telephone and telegraph apparatus	1000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus*****	750
3671	Radio and television receiving type electron tubes, except cathode ray	1000
3672	Cathode ray television picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1000
3694	Electrical equipment for internal combustion engines	750
	MAJOR GROUP 37—TRANSPORTATION EQUIPMENT	
3711	Motor vehicles and passenger car bodies	1000
37111	Passenger cars (knocked down or assembled)****	
3721	Aircraft******	1500
3724	Aircraft engines and engine parts******	1000
3728	Aircraft parts and auxiliary equipment, not elsewhere classified	1000
3731	Shipbuilding and repairing *******	1000
3743	Railroad equipment	1000
3761	Guided missiles and space vehicles	1000
3764	Guided missiles and space vehicle propulsion units and propulsion unit parts	1000
3769	Guided missile and space vehicle parts and auxiliary equipment, not elsewhere classified	1000
3795	Tanks and tank components	1000
	MAJOR GROUP 39—MISCELLANEOUS MANUFACTURING INDUSTRIES	
3996	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750

[See footnotes on following page.]

FOOTNOTES FOR PRECEDING LIST

* The "*number of employees*" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters.

** *Reserved.*

*** The size standard for SIC 2911 is set forth in 1–701.1(2)*b2*.

**** The size standard for SIC 30111, 30112, and 37111 are set forth in 1–701.1(2)*b3 and 4*.

***** Guided missile engines and engine parts are classified in SIC 3764 and 3724. Missile control systems are classified in SIC 3662.

****** Includes maintenance as defined in the federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations: " '*Maintenance*' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance. " '*Preventive maintenance*' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

******* Shipbuilding and repairing industry includes establishments primarily engaged in building and repairing all types of ships, barges, canal boats, and lighters, of 5 gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabrication or repairing structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included. The size standard for Boatbuilding and Repairing (establishments primarily engaged in building and repairing all types of boats, except rubber boats, under 5 gross tons) is 500.

1-702. General Policy.

(a) It is the policy of the Department of Defense to place a fair proportion of its total purchases and contracts for supplies, research and development, and services (including contracts for maintenance, repairs, and construction) with small business concerns. Every effort should be made to encourage participation by such concerns in the acquisition of supplies and services that are within their capabilities. Heads of contracting activities and heads of field contracting and contract administration activities are responsible for the effective implementation of the Small Business and Small Disadvantaged Business Utilization Program(s) within their respective activities and for the accomplishment of assigned program goals. Heads of contracting activities and heads of field contracting and contract administration activities will assure that contracting and technical personnel attached to their activities are informed of the benefits that accrue to the Nation and to the Department of Defense through the proper use of the capabilities of small business concerns in the acquisition of military requirements and that these individuals take all reasonable action to increase the level of participation by small business firms in the awards for products and services by their activities.

(b) Small business concerns, both established and potential suppliers (1-701.3 and 1-701.4), shall be afforded an equitable opportunity to compete for all contracts that they can perform. Therefore, the Departments, to the extent consistent with the best interests of the Government and in order to broaden the industrial base, shall:

(i) attempt to locate additional qualified small business suppliers by all appropriate methods, including use of the assistance of SBA, particularly where only a limited number of small business concerns are on bidders' mailing lists;

(ii) give wide publicity to contracting methods and practices;

(iii) publicize proposed acquisitions by use of advance notices or other appropriate methods (see 1-1003);

(iv) include all established and qualified potential small business suppliers on the bidders' mailing lists (see 2-205);

(v) send solicitations to all firms on the appropriate list, except that where less than a complete list is to be used pursuant to 2-205.4, at least a pro rata number of small business concerns shall be solicited;

(vi) divide proposed acquisition of supplies and services, except construction, into quantities not less than economic production runs, so as to permit bidding on quantities less than the total requirements; allow the maximum time practicable for preparation and submission of bids, proposals, or quotations; where feasible, establish delivery schedules which will encourage small business participation;

(vii) examine each major acquisition to determine the extent to which small business subcontracting should be encouraged or required;

(viii) use small business concerns to the maximum extent feasible as planned producers in the Industrial Readiness Planning Program; and

(ix) maintain liaison with Federal, State (including Governor's Commissions), and local agencies and other organizations for the purpose of providing information and assistance to small business concerns.

(c) Except as approved in 3-603.1(g), all proposed acquisitions of supplies or services with an anticipated dollar value of $10,000 or less, which are subject to small purchase procedures, are small business-small purchase set-asides. Each solicitation shall contain the clause in 7-2003.32. In the event the solicitation is oral, information substantially identical to that in 7-2003.32 shall be given to potential quoters.

(d) The extent of participation by small business concerns in defense acquisition shall be accurately measured, reported, and publicized. All solicitations shall require each prospective supplier to represent whether it is a small business or small disadvantaged business concern for purposes of the specific acquisition (see 1-701 and 1-703). Records of the total value of contracts and subcontracts placed with small business concerns during each fiscal year shall be maintained by the use of DD Form 350 (Individual Procurement Action Report), DD Form 1057 (Monthly Procurement Summary by Purchasing Office), Standard Form 294 (Subcontracting Report for Individual Contracts), and Standard Form 295 (Summary Subcontract Report) (see 1-707.2(f)).

(e) The Military Departments shall assign small business technical advisors to assist each resident SBA Procurement Center Representative in the performance of his duties. (See 1-704.4.)

1-703 Determination of Status as Small Business Concern.

(a) *General.*

(1) *Prior to Solicitation.* If a contracting officer or a small business specialist requires information from SBA concerning the size status of a concern in order to make a determination concerning (i) the initiation of a small business set-aside, or (ii) the forwarding of a small business restricted solicitation to such concern but time considerations preclude obtaining a formal SBA small business size determination, he may request informal advice on the matter from the SBA district office having jurisdiction of the geographical area in which the contracting officer is located. While a contracting officer or a small business specialist may take action on the basis of such informal advice, such advice shall not be binding with respect to the final establishment of the eligibility of a concern as a small business for the purpose of a particular acquisition; nor shall it be considered a formal SBA small business size determination (see (b)(3) and (4)).

(2) *Subsequent to Solicitation.* Except as provided in (b) below, the contracting officer shall accept at face value for the particular acquisition involved, a representation by the bidder or offeror that it is a small business concern.

(b) *Representation by a Bidder or Offeror.* Representation by a bidder or offeror that it is a small business concern shall be effective, even though questioned in accordance with the terms of this subparagraph (b), unless the SBA, in response to such question and pursuant to the procedures in (3) below, determines that the bidder or offeror in question is not a small business concern. If an acquisition calls for more than one item and the solicitation permits bids on any item, all items, or all or none, the offeror must meet the small business size standard for each item it is awarded. If the acquisition calls for more than one item and the solicitation requires bids on an all or none basis, the offeror can qualify as small business for such acquisition if it meets the size standard for the item accounting for the greatest percentage of the total contract value. The controlling points in time for a determination concerning the size status of a questioned bidder or offeror shall be the date of written representation as a small business submitted, as part of a concern's submission of a bid or offer, to either a contracting officer, if offering as a prime contractor, or to a prime or upper tier subcontractor, if offering as a subcontractor. A representation by a bidder or offeror that it is a small business concern will not be accepted by the contracting officer if it is known that (i) such concern has previously been finally determined by SBA to be ineligible as a small business for the item or service being acquired, and (ii) such concern has not subsequently been certified by SBA as being a small business. If SBA has determined that a concern is ineligible as a small business for the purpose of a particular acquisition, it cannot thereafter become eligible for the purpose of such acquisition by taking affirmative action to constitute itself as small business.

(1) *Protest of Small Business Status.* Any bidder, offeror, or other interested party may, in connection with a contract involving a small business set aside or otherwise involving small business preferential consideration, challenge the small business status of any bidder or offeror by sending or delivering a protest to the contracting officer responsible for the particular acquisition. As used in this paragraph, "*protest*" means a statement by telephone or in writing from any bidder or offeror on a particular acquisition (or from any other interested party) alleging that a bidder or offeror on such acquisition is not a small business concern. The statement shall contain the basis for the protest together with specific detailed evidence supporting the protestant's claim. In order to apply to the acquisition in question, such protest must be filed with and delivered to the contracting officer prior to the close of business on the fifth day exclusive of Saturday, Sunday, and legal holidays after bid opening date for formally advertised and small business restricted advertised acquisitions. In acquisitions requiring submission of proposals, the contracting officer shall, except under the circumstances specified in 3-508.2(b), notify the apparently unsuccessful offerors in writing of the name and location of the apparently successful offeror(s) and establish a deadline date (five working days plus a reasonable time for the notice to reach the unsuccessful offerors) by which any size protest on the instant acquisition must be received. To be considered timely, a protest must be delivered to the contracting officer by hand, telegram, or mail, within the five day period allotted. A protest shall also be considered timely if made by telephone to the contracting officer within the five day period allotted, and the contracting officer thereafter receives a confirming letter (i) within such five day period, or (ii) postmarked no later than one day after the date of such telephone protest. The following procedures shall apply:

a. Timely Protest Received Prior to Award — When the contracting officer receives a timely protest prior to award, he shall forward the protest record to the Small Business Administration district office serving the area in which the protested concern is located. The Small Business Administration will promptly notify the contracting officer and the protestant of the date of its receipt of any such protest and will advise the bidder or offeror in question that his small business status is under review.

b. Untimely Protests Received Prior to Award. — A protest which is not timely, even though received before award, shall be forwarded to the Small Business Administration district office serving the area in which the protested concern is located, with a notation thereon that the protest is not timely. The protestant shall be notified that his protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions; however, see (2) below for authority of contracting officer to question small business status of an apparently successful offeror at any time prior or subsequent to award.

c. Action on Protests Received After Award — A protest received by a contracting officer after award of a contract shall be forwarded to the Small Business Administration district office serving the area in which the protested concern is located with a notation thereon that award has been made. The protestant shall be notified that award has been made and that his protest has been forwarded to SBA for its consideration in future actions.

d. Action on Protests Involving Offerors Not Being Considered for Award. — If the contracting officer receives a size protest which challenges the small business status of an offeror not being considered for award, there will be no suspension of contracting action. The protest shall be forwarded to the Small Business Administration district office serving the area in which the protested concern is located with a notation thereon that such concern is not being considered for award. The protestant shall be notified at an appropriate time of the action taken by the contracting officer and that his protest will be considered by SBA in future actions.

(2) *Questioning of Status by Contracting Officer.* A contracting officer may, any time after bid opening, or date for submission of proposals, question the small business status of any bidder or offeror on the instant acquisition by filing a written protest with the SBA district office of the district in which the bidder or offeror has his principal place of business. Such notice shall contain a statement of the basis for the protest, together with available supporting facts. A protest by a contracting officer shall be timely for the purpose of the acquisition in question whether filed before or after award. SBA will advise the bidder or offeror in question that his small business status is under review.

(3) *Determination by SBA District Director.* The SBA District Director will determine the small business status of the questioned bidder or offeror and notify the contracting officer and the bidder or offeror of his determination, and award may be made on the basis of that determination. This determination is final unless it is appealed in accordance with (4) below, and the contracting officer is notified of the appeal prior to award. If an award was made prior to the time the contracting officer received notice of the appeal, the contract shall be presumed to be valid. Action to be taken on SBA determinations shall be as follows:

(i) If the SBA District Director's determination is not received by the contracting officer 10 working days after SBA's initial receipt of a protest or notice questioning the Small Business status of a bidder or offeror, it shall be presumed that the questioned bidder or offeror is a small business concern. This presumption will not be used as a basis for making an award to the questioned bidder or offeror without first ascertaining when a size determination can be expected from SBA, and where practicable, waiting for such determination, unless further delay in award would be disadvantageous to the Government.

(ii) If an appeal from the SBA District Director's determination is made, pursuant to (4) below, to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416, and the contracting officer is notified prior to award, an additional 20 working days (*i.e.*, 30 working days inclusive from the time of initial receipt of the case in the SBA District Office) shall be allowed for receipt of the SBA size determination.

(iii) If the determination of the Chairman, Size Appeals Board, Small Business Administration, on the appeal is not received by the contracting officer within the 30 working day period, it shall be presumed that the SBA District Director's size determination has been sustained.

(iv) Until receipt of the SBA determination of the size status, or expiration of the ten day period (30 days in case of an appeal to the Chairman, Size Appeals Board), whichever occurs first, contracting action shall be suspended; however, this suspension shall not apply to any urgent acquisition action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(4) *Appeal From Size Determination.* An appeal from a size determination made by an SBA District Director may be taken before the close of business on the fifth working day after the receipt of such decision. Unless such written notice of appeal is received by the SBA Size Appeals Board, Washington, D.C., within this time and the contracting officer has been notified of such appeal prior to award, the appellant will be deemed to have waived its rights of appeal insofar as the pending procurement is concerned.

(5) *Award of Set-Aside Acquisitions.* Except as provided in 3-508.1 or when the contracting officer determines in writing that award must be made without delay to protect the public interest, award will not be made prior to (i) five working days after the bid opening date for acquisitions placed through small business restricted advertising, or (ii) the deadline date for submitting a protest set forth in the notification to the apparently unsuccessful offeror(s) for small business set-aside acquisitions placed through conventional negotiation.

(c) *Product Classification.*

(1) *Determination by Contracting Officer.* The contracting officer shall determine the appropriate classification of a product or service establishing the small business definition to be used in a specific acquisition. If different products or services are being acquired on the same solicitation, an appropriate small business size standard shall be established for each product or service. Both the classification and the applicable size standard (number of employees, average annual receipts, etc.), pursuant to 1-701, shall be set forth in each solicitation in excess of $10,000, and in each solicitation of $10,000 or less which is a small business set-aside. The contracting officer's determination shall be final unless appealed in accordance with (2) below.

(2) *Appeal From Classification.* An appeal from a product or service classification determination by a contracting officer must be taken:

(i) not less than 10 working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is more than 30 days after the issuance of the invitation for bids or request for proposals or quotations; or

(ii) not less than five working days before the bid opening date or the deadline for submitting proposals or quotations where this date or deadline is 30 or less days after the issuance of the invitation for bids or request for proposals or quotations.

Such appeals shall be directed to the Chairman, Size Appeals Board, Small Business Administration, Washington, D.C. 20416.

(3) *Action of Size Appeals Board.* The Size Appeals Board will promptly notify the contracting officer of the receipt of a valid appeal and, if possible, will inform the contracting officer prior to the date set for opening of the solicitation of its ruling on the appeal. The SBA decision, if received prior to the opening date, shall be considered final, and solicitations will be modified to reflect such decision, if necessary. Where appropriate, opening dates may be extended. SBA rulings received after the opening date shall not apply to the current acquisition but shall apply in future acquisitions of the product or service.

1-704 Small and Disadvantaged Business Utilization Officials.

1-704.1 (a) Director of Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization is responsible for the overall management and direction of the DoD small business, disadvantaged business utilization, and labor surplus area programs and for advising the Secretary of Defense and the Deputy Secretary of Defense in matters relating to these programs. To that end, the Director will provide guidance to the Departments and periodically review the direction and implementation of their activities in promoting contract awards to small business, small disadvantaged business, and labor surplus area concerns.

(b) Director of Small Business and Economic Utilization Policy. The Director of Small Business and Economic Utilization Policy is responsible for the establishment, implementation, and execution of DoD small business and labor surplus area programs. Negotiations with the SBA, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning small business and labor surplus area policy, programs, and DoD goals shall be conducted by the Director of Small Business and Economic Utilization Policy or, with his authorization, by representatives of the Departments. The Director of Small Business and Economic Utilization Policy, on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding small business and labor surplus area matters.

(c) Director of Disadvantaged Business Utilization Policy. The Director of Disadvantaged Business Utilization Policy is responsible for the establishment, implementation, and execution of the DoD socially and economically disadvantaged business utilization program. Negotiations with the Small Business Administration, the Office of Federal Procurement Policy, the Office of Management and Budget, and other agencies or departments outside the Department of Defense, concerning disadvantaged business utilization policy, programs, and DoD goals shall be conducted by the Director for Disadvantaged Business Utilization Policy or, with his authorization, by representatives of the Departments. The Director of Disadvantaged Business Utilization Policy on behalf of the Director of Small and Disadvantaged Business Utilization, will provide guidance to the Departments' Directors of Small and Disadvantaged Business Utilization regarding disadvantaged business utilization matters.

1-704.2 (a) Departmental Directors of Small and Disadvantaged Business Utilization. Each Department or Agency shall maintain an Office of Small and Disadvantaged Business Utilization as follows:

(i) Army - Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Army, Pentagon, Washington, D.C. 20310;

(ii) Navy - Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary of the Navy, Washington, D.C. 20360;

(iii) Air Force - Director, Office of Small and Disadvantaged Business Utilization, DCS/RD&A, Pentagon, Washington, D.C, 20330;

(iv) Defense Logistics Agency - Staff Director, Office of Small and Disadvantaged Business Utilization, Code DLA-U, Cameron Station, Alexandria, Virginia 22314;

(v) National Security Agency - Director, Office of Small and Disadvantaged Business Utilization, Fort Meade, MD 20755;

(vi) Defense Communications Agency - Director, Office of Small and Disadvantaged Business Utilization, Code 260, Washington, D.C. 20305;

(vii) Defense Nuclear Agency - Director, Office of Small and Disadvantaged Business Utilization, (Code OAFR), Washington, D.C. 20305.

(viii) Defense Mapping Agency - Director, Office of Small and Disadvantaged Business Utilization, Headquarters, Washington, D.C. 20305.

(b) Each Departmental Office of Small and Disadvantaged Business Utilization shall be managed by a Director who shall be appointed by the Secretary of the department and shall be responsible to and report directly to the Secretary or Under Secretary of the Department. Directors of Defense agencies shall appoint a Staff Director for Small and Disadvantaged Business Utilization who shall be responsible to and report directly to the Director or his Deputy.

(c) The primary responsibility of the Director or Staff Director of each Office of Small and Disadvantaged Business Utilization shall be in matters concerning small business, small disadvantaged business utilization, and labor surplus areas.

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The Director or Staff Director advises the Secretary on small business, small disadvantaged business utilization and labor surplus area matters, implements such DoD programs within the Department or Agency and represents the Department or Agency in negotiations with other Departments or Governmental agencies on small business, small disadvantaged business utilization and labor surplus area matters. The Director or Staff Director will exercise supervisory authority over Department or Agency Small and Disadvantaged Business Utilization Specialists regarding small business, disadvantaged business utilization and labor surplus area matters. Appointment of Small and Disadvantaged Business Utilization Specialists shall be made after consultation with the Director or Staff Director of the Office of Small and Disadvantaged Business Utilization for the Department or Agency involved. In addition, such Director shall be afforded an opportunity to comment upon, and contribute to the performance evaluations of the Specialists for the contracting activities and contract administration offices or major organizational elements of the Department involved, including pay pursuant to the Civil Service Reform Act of 1978.

1-704.3 Small and Disadvantaged Business Utilization Specialists.

(a) Small and disadvantaged business utilization specialists shall be appointed by name, in writing, for contracting activities, contract administration offices, and other such offices, as the Departments consider appropriate. They shall be responsible directly to the appointing authority and shall not be subject to the direction of contracting, contract administration, or technical personnel. The appointing authority, without power of redelegation, is as follows:

(i) Army - Commanders of major commands, Commanders of major subordinate commands, and installation, post, camp, station or activity commanders. For each major command, one specialist will be appointed as the Associate Director for Small and Disadvantaged Business Utilization, reporting directly to the Commander or the second-in-command. The Associate Director will have primary responsibility for the effective implementation of the Army's small business, disadvantaged business utilization, labor surplus area and other socio-economic business programs within the Command. The Associate Director for Small and Disadvantaged Business Utilization Policy at Major Command Headquarters other than at the Materiel Development and Readiness Command (DARCOM), Office, Chief of Engineers (OCE), Forces Command (FORSCOM), Training and Doctrine Command (TRADOC), may be assigned on a part-time basis.

(ii) Navy - Head of a contracting activity or the official in charge of an activity having purchase authority of $10,000 or more, or in charge of a contract administration activity;
(iii) Air Force - Commander of each central procurement activity; the Wing/Base Commander of each local purchasing activity and the Chief of each contract administration activity. In addition, an Executive for Small and Disadvantaged Business Utilization shall be appointed by the Commander of each Major Air Command in the United States, not mandatorily reporting directly to the Commander but having ready access to such person, who will have primary responsibility for the effective implementation of the Air Force small business, small disadvantaged business utilization and labor surplus area program(s) within the Command;
(iv) Defense Logistics Agency - Commanders of Defense Supply Centers, Commanders, Defense Contract Administration Services Regions and Commanders of other DLA contracting activities;
(v) National Security Agency - the Director;
(vi) Defense Communications Agency - the Director;
(vii) Defense Nuclear Agency - the Director;
(viii) Defense Mapping Agency - Director; directors of subordinate components.

A copy of each appointment and termination of appointment of all such specialists shall be forwarded to the appropriate Department or Agency Office of Small and Disadvantaged Business Utilization (1-704.2). In addition to performing that portion of the specific program outlined in (b) below that is normally performed in the activity to which he is assigned, the small and disadvantaged business utilization specialist shall advise the head of the activity and shall perform such additional functions as are prescribed for him in furtherance of the overall small business, small disadvantaged business utilization and labor surplus area programs. A small and disadvantaged business utilization specialist shall be appointed on a full-time basis in all activities having sufficient business or program responsibility to justify such action. When the volume of contracting does not warrant assignment of a full time small and disadvantaged business utilization specialist, an individual shall be appointed as the specialist on a part-time basis. The responsibilities of this assignment shall take precedence over collateral responsibilities.

(b) A small and disadvantaged business utilization specialist (SADBU), appointed pursuant to (a) above, shall: perform the following duties, as determined to be appropriate to the activity by the appointing officer or by the Departmental or Agency Director or Staff Director of Small and Disadvantaged Business Utilization. The SADBU shall:

(i) maintain a program designed to locate capable small business, small disadvantaged business and labor surplus area business sources for current and future acquisitions, through SBA or other methods;

(ii) coordinate inquiries and requests for advice from small business, small disadvantaged business and labor surplus area business concerns on acquisition matters;

(iii) prior to the issuance of solicitations or contract modifications (A) for additional supplies or services in excess of $2,500 which have not been set aside under 1-706.1(c) or (B) for a dissolved small business-small purchase set-aside (1-702(c)), review the contracting officer's justification for either action. In automated contracting systems, such reviews will be accomplished prior to entering the item into the automated system after which no further review of the individual acquisition will be necessary if the automated system is so programmed that any changes in the acquisition of the item satisfy the provisions of 1-702(c), 1-706.1(c) and (f), and 1-706.5(a)(1). Disagreements between the specialist and the contracting officer on proposed set-aside actions for small business (not including small business-small purchase set-asides (1-702(c))) shall be resolved under 1-706.3.

(iv) when small business concerns cannot be given an opportunity to compete because adequate specifications or drawings are not available, unless there are sufficient and valid reasons to the contrary, initiate action, in writing, with appropriate technical and contracting personnel to insure that necessary specifications or drawings for the current or future acquisitions, as appropriate, are available;

(v) review acquisition programs for possible breakout of items suitable for acquisition from small business concerns;

(vi) insure that financial assistance, available under existing regulations, is offered and that requests by small business concerns for proper assistance are not treated as a handicap in the award of contracts. (See Appendix E, Parts 4 and 5.)

(vii) participate in determinations concerning responsibility of a prospective contractor (see 1-904) whenever small business concerns are involved;

(viii) participate in the evaluation of a prime contractor's small business, labor surplus, and small disadvantaged business subcontracting plans;

(ix) review and make appropriate recommendations to the contracting officer on any proposal to furnish Government owned facilities to a contractor if such action may hurt the small business program;

(x) assure that participation of small business concerns is accurately reported;

(xi) bring to the attention of the Department Director or Staff Director for Small and Disadvantaged Business Utilization possible contracting opportunities in labor surplus area;

(xii) make available to SBA copies of solicitations when so requested;

(xiii) when a bid from a small business, small disadvantaged business or labor surplus area firm has been rejected for nonresponsiveness or nonresponsibility, upon request, aid, counsel and assist that firm in understanding requirements for responsiveness and responsibility so that the firm may be able to qualify for future awards;

(xiv) participate in government-industry conferences to assist small business, small disadvantaged business and labor surplus area concerns, including Business Opportunity/Federal Procurement Conferences, Minority Business Enterprises Procurement Seminars, and Minority Business Opportunity Committee meetings;

(xv) advise potential suppliers how they can obtain information about formal advertising and negotiated acquisitions and that they can subscribe to the Commerce Business Daily as a source of information on proposed acquisitions;

(xvi) brief his commander at least once quarterly concerning the status of the installation's small business, small disadvantaged business utilization and labor surplus area programs in relation to goals and objectives established by higher headquarters;

(xvii) participate in the development, implementation and review of automated contracting systems to assure that the interests of small business, small disadvantaged business and labor surplus area firms are fully considered with particular reference to 1-702(b)(v), 1-706.1(d) and 1-706.5;

(xviii) assist program managers as early as possible in the development cycle of major system acquisitions and system programs as pertains to the small business programs;

(xix) assist contracting officers in establishing criteria for and determining acceptability of small business and small disadvantaged business concerns subcontracting plans submitted by prime contractors;

(xx) assure that the installation's small business, small disadvantaged business and labor surplus area business programs are frequently publicized in the appropriate media;

(xxi) assure that the organization maintains a list of products and services which have been placed on repetitive small business set-aside;

(xxii) provide small business, small disadvantaged business and labor surplus area firms information regarding assistance available from Federal agencies such as the Small Business Administration, Office of Minority Business Enterprise, Bureau of Indian Affairs, Office of Economic Development, National Science Foundation, Department of Labor and others including state, trade and other associations;

(xxiii) be responsible for establishing an education and training program for personnel whose duties and functions affect the activity's small business, small disadvantaged business and firms located in labor surplus areas;

(xxiv) recommend to his Commander the activity small business and disadvantaged business utilization overall goals and goals to be placed on subordinate contracting offices; and

(xxv) participate in interagency programs relating to small business, small disadvantaged business and labor surplus area matters as authorized by the Director of SADBU.

(xxvi) advise and assist contracting officers in discharging their responsibilities by:
  (A) monitoring and reviewing contractor performance to determine compliance with small and disadvantaged small business subcontracting plans;
  (B) developing and maintaining records and reports that reflect such compliance or noncompliance.

1-704.4 *Small Business Technical Advisor.*

(a) A Small Business Technical Advisor (SBTA) appointed pursuant to 1-702(e) shall be a full-time employee of the contracting activity and shall be well qualified, technically trained, and familiar with the supplies or services acquired at the activity.

(b) The principal duty of this advisor shall be to assist the SBA Procurement Center Representative in his duties and functions relating to Sections 8 and 15 of the Small Business Act. Providing such assistance shall take precedence over any other collateral duties that may be the responsibility of the SBTA.

1-705 Cooperation With the Small Business Administration.

1-705.1 General. The Directors Small and Disadvantaged Business Utilization are responsible for consulting and cooperating with the Administrator, SBA in formulating and implementing policies and programs for small business and small disadvantaged business participation in Defense contracting and subcontracting. Department of Defense contracting and contract administration activities are responsible for working with the SBA in carrying out these policies and programs, in accordance with the provisions of this paragraph 1-705.

1-705.2 SBA Representatives.

(a) SBA may assign representatives to any contracting or contract administration activity on a full or part time basis to carry out SBA policies and programs. The SBA representative shall be informed of the mission of the activity. In accordance with the procedures of the Department or Agency concerned, SBA shall obtain security clearances for each of its representatives. SBA representatives and employees shall comply with Departmental directives concerning the conduct of Department of Defense contracting personnel. The duties of the assigned SBA representatives include review of proposed acquisitions to recommend to the contracting activity (i) set-asides on selected acquisitions not unilaterally set aside by the contracting officer, (ii) new qualified potential small, disadvantaged and labor surplus area business sources, and (iii) breakout of components for competitive acquisition. SBA representatives may also conduct periodic reviews of contracting activities to ascertain whether there is compliance with the small, disadvantaged and labor surplus area business policies prescribed by DAR.

(b) The contracting activities shall include in the appropriate bidder's list, or in any group of firms to be solicited in specific acquisitions, the names of firms submitted by SBA, unless there is a valid reason for not so doing.

(c) If the contracting officer determines not to solicit a firm recommended by SBA in a particular acquisition, and, as a result no small business firm will be solicited, SBA may appeal such determination to the Chief of the Contracting Office.

1-705.3 Access to Contracting Information. Upon request, and subject to applicable security regulations, the small and disadvantaged business utilization specialist shall provide SBA representatives access to available or reasonably obtainable information, including technical data (including drawings and specifications), contract history, bidders lists, and acquisition planning information. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

1-705.4 ***Certificates of Competency.***

(a) SBA has statutory authority to certify the competency of any small business concern as to all elements of responsibility including but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity except regulatory requirements under the jurisdiction of other Federal agencies. Contracting officers shall accept SBA certificates of competency as conclusive of a prospective contractor's responsibility (see 1-903.1, 1-903.2 and 1-903.3) unless the contracting officer has substantial doubt as to the concern's ability to perform, in which case the procedures in (f) apply. For nonmanufacturing industries, see 1-701.1(a)(2)*c*.

(b) In acquisitions where the highest competence obtainable or the best scientific approach is needed, as in certain negotiated acquisitions of research and development, highly complex equipment, or personal or professional services, the certificate of competency procedure is not applicable to the selection of the source offering the highest competence obtainable or best scientific approach. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible, the certificate of competency procedure is applicable.

(c) If a bid or proposal of a small business concern is to be rejected because the contracting officer has determined the concern to be nonresponsible, the matter shall be referred to the appropriate SBA field office having the authority to process the referral in the geographical area involved. Such referrals shall not be made where the acquisition is made pursuant to small purchase procedures. If required, guidance as to the location of the appropriate SBA field office may be obtained from an SBA representative assigned to the contracting activity or the nearest SBA field office. A preaward survey, in accordance with 1-905.4, shall be conducted prior to a determination by a contracting officer that a small business concern is not responsible on a proposed award, except when small purchase procedures are used. Concurrent referrals of two or more bids or proposals, rejected because of nonresponsibility for a proposed award, shall not be made to SBA by the contracting officer. Final processing of a case, including possible issuance of a COC, must be completed by SBA on each referral before the contracting officer may proceed with an additional referral on the proposed award to SBA. If a partial set-aside is involved and the bid of a small business concern on the unreserved portion is to be rejected for nonresponsibility and the same small business concern is entitled to consideration on the reserved portion of the set-aside if a COC is issued by the SBA, the entire quantity of the acquisition (reserved and unreserved) for which that small business concern may be entitled, if competent, shall be referred to SBA and the referral papers so noted. The contracting officer may request SBA to certify the small business concern for the maximum quantity of the acquisition for which it has been determined responsible. The award shall be withheld until SBA action concerning issuance of a COC or until 15 working days after the SBA is so notified, whichever is earlier, subject to the following:

(1) Under no circumstances will a referral be made to the SBA prior to a determination by the contracting officer that the offer of the small business concern is responsive. Except for acquisitions resulting in construction or service contracts, an offer of an otherwise eligible nonmanufacturer shall not be referred to the SBA for COC action if the offeror agrees that he does not meet the definition of small business for preferential treatment purposes as prescribed in 1-701.1(a)(2)*c*. Disagreements will be resolved in accordance with 1-703(b).

(2) The activity performing the preaward survey shall furnish the survey to the PCO. If the PCO determines, in accordance with 1-904, that the small business concern is not responsible, he will refer the matter directly to the SBA, or he may notify the preaward survey activity to refer the matter to the SBA, whichever is the more expeditious (e.g., where the surveying activity is nearer to the cognizant SBA office).

(3) *a*. Upon making a determination to refer the matter to the SBA, the PCO shall furnish to the SBA, or to the surveying activity, whichever is consistent with the action taken under (2) above, the data described in (d) below. The activity that refers the matter to the SBA shall maintain close liaison to insure compliance with ((e) below. If the activity does not hear from the cognizant SBA field office within 5 working days after referral, the activity will contact the SBA office to which the matter was referred to determine whether a Certificate of Competency (COC) is being processed. When, in accordance with (2) above, the PCO has requested the preaward survey activity to refer the matter to SBA, that activity shall keep the PCO advised of significant developments, including the results of any inquiry to the SBA at the end of the 5-working-day period, and any new or additional facts that warrant a change in the preaward survey activity's findings.

b. The departmental Director or Staff Director of Small and Disadvantaged Business Utilization, identified in 1-704.2(a), shall be informed by the contracting activity Small and Disadvantaged Business Utilization Specialist, in writing, on a quarterly basis, of all certificate of competency cases initiated during a particular quarter and of the final disposition made on cases during the quarter, including the number and dollar value of COCs issued during the period. The information shall include company name, item being acquired, solicitation number, dollar value of the contract, and the date the case was submitted to SBA. In addition, advice and data will be furnished for all cases where (i) the small business concern elects not to file an application for a COC; or (ii) SBA declines to issue a COC; or (iii) the contracting activity reverses the preaward survey activity's negative finding concerning responsibility, withdraws the request for the COC, and makes the award. This reporting requirement is assigned RCS DD-DR&E(Q)1152.

(4) *Reserved.*

(5) A referral need not be made to the SBA if a contracting officer determines a small business concern to be unqualified and ineligible pursuant to 1-903.1(v) and if the determination is approved by the head of the contracting activity or his designee.

(6) A referral need not be made to the SBA if a small business concern has been suspended or debarred pursuant to Executive Order 11246 or DAR 1-600.

(7) A determination by a contracting officer that a small business concern is not responsible must be supported by substantial evidence documented in the contract files.

(d) It is the policy of the Department of Defense to endeavor to reach agreement with the SBA regarding the responsibility of a small business concern. To assist the SBA and to insure that it has the benefit of the view of the Department, the SBA shall be furnished three copies of the solicitation, one copy of the pertinent drawings and specifications, the preaward survey findings, pertinent technical and financial information, and, if available, the abstract of bids and other pertinent information which supported the contracting officer's determination of nonresponsibility.

(e) SBA field offices will notify the PCO of each case where they (i) plan to issue a Certificate of Competency or (ii) are submitting a case to SBA, Washington, D.C., for approval prior to issuance of a Certificate of Competency, and will provide the contracting officer or his designated representative with a brief written statement citing the reasons for SBA's proposed affirmative action. Prior to final SBA action, the PCO (or the preaward survey activity when authorized to act as his representative) will be afforded an opportunity to meet or communicate with SBA field office representatives and furnish to them new or additional information on the case. Copies of significant data developed by SBA that are pertinent to the case will be available, upon request, to the PCO or his representative at such a meeting or through correspondence. SBA case files may be examined at the meeting and pertinent notes taken by the contracting officer or his representative, but such files will not be released outside of SBA. Personnel from a contracting office or surveying activity who participated in a preaward survey of the prospective contractor or other personnel having cognizance of the survey shall be prepared to discuss with the SBA the basis for the preaward findings. Every effort should be made to resolve any differences between the SBA and the Departments through a complete exchange of preaward information developed by each agency.

(f) If, after complying with (e) above, doubt still exists as to the ability of the contractor to perform, the contracting officer shall request the SBA field office to suspend action and to forward the case to SBA, Washington, D.C. (HQ SBA), for review. If HQ SBA does not concur with the proposed affirmative action of its field office, it will so inform the contracting officer by telephone followed by written confirmation. If HQ SBA concurs with the affirmative action proposed by its field office, it will so inform the Department or Agency Director or Staff Director of Small and Disadvantaged Business Utilization identified in 1-704.2, providing a brief written statement of reasons for the proposed affirmative action. Within 10 working days after receipt of written confirmation, or such longer periods as may be agreed upon between them, the Department Director of Small and Disadvantaged Business Utilization will inform HQ SBA whether his Department will present a formal appeal to HQ SBA for its consideration prior to its reaching a final decision on the issuance of a COC. Such appeal will be presented to HQ SBA within a maximum of 10 working days after HQ SBA is informed that an appeal will be taken, or at such longer period as may be agreed upon by the Department Director or Staff Director of Small and Disadvantaged Business Utilization and HQ SBA. The 15-day period referred to in (c) shall be automatically suspended when the contracting officer requests SBA to suspend action and forward the request to HQ SBA for review in accordance with this paragraph. If the Department elects to present a formal appeal to HQ SBA, a factual case shall be prepared as expeditiously as possible and processed through departmental channels for approval at the Secretarial level prior to presenting the matter to HQ SBA. Any competent level of review within the Department or Agency may conclude that a formal appeal should not be made and that the contract should be awarded to the small business concern in question without a COC or that a COC should be accepted and the award made. If such action is taken, the contracting officer and HQ SBA shall be advised accordingly. OSD Director of Small and Disadvantaged Business Utilization will be informed by the Department or Agency Director of Small and Disadvantaged Business Utilization of proposed appeals to HQ SBA and a representative of OSD Director of Small and Disadvantaged Business Utilization may join with a Department team on each formal appeal to HQ SBA. Following an appeal, the determination, if affirmative, made by the SBA Associate Administrator relative to Certificate of Competency action shall be considered conclusive, and the contracting officer shall award the contract to the concern without requiring the concern to meet any other requirement of responsibility.

(g) If, subsequent to the request for a COC but prior to the SBA's final action on it, new additional facts so warrant, the negative determination as to responsibility of the apparent low bidder or offeror shall be reversed and the contract awarded. The PCO shall promptly inform the SBA field office of his action.

(h) When the contracting officer has questioned only one of the general standards of responsibility of a small business offeror, but the SBA has declined to issue a COC due to its findings concerning the offeror's capability to perform under a different standard of responsibility, the responsible SBA office will inform the contracting officer of the basis for its decision. The information furnished by SBA to the contracting officer will generally consist of a copy of the letter sent to the offeror in question, explaining why SBA declines to issue a COC. This information will be considered by the contracting officer in making an award of the contract.

1-705.5 *Contracting With the Small Business Administration.*

(a) *Authority.* Pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) the SBA is empowered to enter into contracts with the Departments for supplies, services, and construction. In any case in which the SBA certifies to any officer of the Government having contracting authority that the SBA is competent and responsible to perform any specific Government contract, such officer shall be authorized in his discretion to let such contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the contracting officer. Such offers to contract with the SBA are conditioned upon the matter, in the event of a disagreement, being submitted for determination to the Secretary of the appropriate department by the Administrator of the SBA. Notification of a proposed referral to the head of the department or agency by the SBA must be received by the contracting officer within 5 days after the SBA is formally notified of the contracting officer's decision. Thereafter, the SBA must provide the request for determination to the head of the department or agency within 15 days. If timely notice of appeal or an appeal is not made, the offer is rescinded. The SBA is further empowered to arrange for the performance of such contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for supplies, services, or construction as may be necessary to enable the SBA to perform such contracts.

(b) Policy.

(1) General. It is the policy of the DoD to enter into contracts with the SBA to foster business ownership by individuals who are both socially and economically disadvantaged and promote the competitive viability of firms owned by such individuals in order that they may have the opportunity to full participation in the free enterprise system.

(2) Business Development Expense. In contracting with the SBA, any costs to DoD which are in excess of the estimated current fair market price anticipated under normal contracting procedures shall be funded by the SBA. These costs, hereafter referred to as business development expenses, include start-up, make ready, training, or similar initial investment or learning costs in excess of those that would normally be incurred by established firms engaged in the same type of business. Upon request by SBA, data used by the contracting officer to make a determination as to the estimated current fair maket price shall be made available to that agency. The estimated current fair market price shall be predicated on the basis of "likely costs" under normal competitive conditions rather than on the basis of the "lowest possible cost." When there is agreement between SBA and the PCO as to the estimated current fair market price of a proposed 8(a) requirement, the responsibility for reviewing, validating, approving, and funding any business development expense shall be assumed by SBA.

(3) *Contract Assistance.* To the extent consistent with DoD capability and resources, SBA contractors furnishing defense requirements shall be afforded production assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(4) Contract Negotiations. Any small business concern selected by the SBA to perform a contract to be let under these provisions shall, when practicable, participate in any negotiations of the terms and conditions of the contract between SBA and the contracting office. When it is mutually agreeable between the SBA and the contracting activity, SBA may authorize the contracting activity to negotiate the proposed subcontract schedule provisions with the 8(a) subcontractor. Any agreements which may be reached as the result of such negotiations must be approved by the SBA prior to award of the contract.

(5) SBA Waiver of Bonds. A small business concern shall not be required to provide any amount of any bond in performance of an 8(a) contract, if the Administrator of the SBA determines in accordance with Section 8(a)(ii) of the Small Business Act that such amount is inappropriate for the concern in performing the contract.

(c) Procedures.

(1) Supplies, Services and Research and Development.

(A) In contracts for supplies, services and research and development, the SBA contracts with only those small firms which have submitted an acceptable and approved written business plan specifically outlining a reasonable approach to the attainment of the policy objectives of (b). In the execution of this policy, the SBA will furnish to the appropriate Department Director of Small and Disadvantaged Business Utilization, or his designee, its request for a commitment to support the approved plan, showing at least the following information:

(i) the background and ownership of the firm;

(ii) how and when the firm is expected to become a self-sustaining, competitive entity;

(iii) the extent to which contracting assistanace is needed and an identification of the requirements sought from the DoD (the identification of the supplies or services which the SBA may require in connection with a small firm's business plan will be developed by the SBA representatives. This may be accomplished through liaison with the appropriate contracting office either before or after the SBA's approval of a small firm's business plan as the SBA may elect. Small and Disadvantaged Business Utilization Specialists at contracting offices shall cooperate and assist the SBA representatives in the development of identifying information for the requirements being sought from the contracting office. To the extent possible, identifying information furnished to the SBA will be definitive and include, purchase descriptions and national stock numbers. The Small and Disadvantaged Business Utilization Specialist shall, when practicable and feasible, arrange for such additional assistance as may be required from contracting, technical and supply management officials in order that the development of the identifying information may be meaningful. Current and future requirements of a small firm's business plan, if identified in meaningful terms will enable the DoD to relate the items to present and future acquisition requirements); and

(iv) if the firm is currently in existence, the present production capacity and related facilities and how any additional facilities needed will be provided.

(B) The Department concerned will evaluate the SBA's request for a commitment to support the business plan approved by the SBA and determine whether or to what extent the Department can support the SBA request. In the evaluation of the SBA requested commitments, consideration shall be given to:

(i) estimated total quantities of the identified items planned for acquisition in the current fiscal year and, to the extent known, future fiscal years;

(ii) required monthly rates of production and delivery scheules;

(iii) items of similar complexity and nature if there are no known requirements of the specifically identified items;

(iv) problems encountered in prior production of the items either by the proposed contractor or other contracts;

(v) impact if slippage in delivery occurs;

(vi) impact if items were acquired historically by small business or labor surplus area set-aside; and

(vii) any other information concerning the items or the proposed contractor which is pertinent to the evaluation of the requested commitments.

(C) After the SBA requested commitments have been evaluated, the Department concerned, through the Director of Small and Disadvantaged Business Utilization or his designee will notify the Office of Business Development, SBA, Washington, D.C., or its designee of the extent to which it appears that contracts will be placed with the SBA as requested. This notification represents a firm commitment of the DoD to negotiate with the SBA, provided, that there is no material change in requirements, availability of funds, and other pertinent factors. The Department, through the Director of Small and Disadvantaged Business Utilization or his designee, will notify the appropriate contracting offices to reserve the initially identified requirements for negotiations of a Section 8(a) award to the SBA. Within ten working days after notification, the SBA will establish contact with the designated contracting office and initiate negotiation of the Section 8(a) contract in support of the SBA requested commitments. If negotiations with the contracting activity have not been initiated by the SBA within the time indicated, the contracting activity will notify the Director of Small and Disadvantaged Business

Utilization or his designee of the intent to proceed with the acquisition without further regard to the Section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the requirement.

(D) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract in the form of a provision in the SBA contract with the DoD contracting office substantially as follows:

> SBA certifies that it is competent to perform the requirement as stated in this contract.

(E) A pre-award survey of the SBA's contractor, as required by 1-905.4, will not generally be requested by the DoD contracting officer. The SBA or the DoD contracting officer may request a cognizant contract administration office to assist in a review of a specific element pertaining to the SBA's contractor's responsibility.

(F) Certified cost or pricing data, when required by 3-807.3, or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of cost or pricing data with a supporting certificate.

(G) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(H) For follow-on year acquisitions in support of the SBA requested commitment, the SBA will initiate individual requests to the Department concerned for each ensuing proposed Section 8(a) contract. This process will permit, prior to actual negotiations of follow-on Section 8(a) awards, the Department to verify the availability of requirements, funding and other pertinent factors. It will be the responsibility of the SBA to provide certification for each Section 8(a) contract in accordance with 1-705.5(c)(1)(D).

(I) To assist the SBA, DoD contracting offices shall prepare two contract sets, as follows:

(i) Prepare Standard Form 26 for use by the SBA with the SBA's contractor. The Standard Form 26 shall show "15 USC 637(a)" in Block 13 and contain all of the information required with the exception of the following, which will be inserted by the SBA:

- (*a*) Block 1, the SBA contract number, which will be constructed in general conformance with Section XX, Part 2;
- (*b*) Block 2, the effective date;
- (*c*) Block 24, the signature of the SBA's contractor;
- (*d*) Block 25, the SBA contractor's date;
- (*e*) Block 27, the signature of the SBA's contracting officer;
- (*f*) Block 28, the name of the SBA's contracting officer; and
- (*g*) Block 29, the date signed.

The contract shall incorporate the general provisions of Standard Form 32, including DoD alterations thereto, and other appropriate provisions as required, recognizing that this contract will be executed between the SBA and the SBA's contractor. The contract also shall include the appropriate one of the following clauses

(*a*) For all contracts excepting civil works contracts of the Corps of Engineers—

JURISDICTION OVER DISPUTES APPEALS (1979 MAR)

For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Armed Services Board of Contract Appeals.

(*b*) For civil works contracts of the Corps of Engineers—

JURISDICTION OVER DISPUTES APPEALS (1979 MAR)

For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Engineer Board of Contract Appeals.

The contract set prepared as shown herein will be provided to the SBA at the time of distribution of the contract set prepared in accordance with (ii) below.

(ii) Prepare a Standard Form 26 for execution with the SBA without incorporating any general provisions of Standard Form 32. The general provisions are not applicable to the SBA. "10 USC 2304(a)(17)" shall be cited as the authority for negotiation of this contract. This contract shall include a statement as follows:

> It is agreed that the provisions of the "Termination for Convenience," "Changes," "Disputes," "Default," and "Price Reduction" clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the DoD Contracting Officer. If the SBA does not agree with the DoD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision.

(J) Contract administration functions will be performed by the cognizant contract administration office as listed in DoD Directive 4105.59-H (DoD Directory of Contract Administration Services Components). Since the contractual relationship between the SBA and its contractor would be analogous to that of a PCO and a prime contractor, the contract administration assignment shall include all functions as required by DAR and shall relate to the location of the SBA's contractor.

(K) The execution and distribution of contracts shall be in accordance with Section XX, Part 4. The SBA is responsible for effecting execution and distribution to the DoD contracting offices and others of the contracts executed with its contractor.

(L) Pricing of Acquisitions and Business Development Expense.

(i) In the determination of an estimated current fair market price for other than acquisitions with a repetitive purchase history which are covered in (ii) below, the PCO shall use price or cost analysis, giving consideration to commercial prices for like services and products, available in-house cost estimates, and data submitted by SBA or its subcontractor, or obtained from any other governmental agency.

(ii) In the determination of an estimated current fair market price for items or services that have been repetitively purchased, the DoD PCO shall consider recent award prices for the same products or services if there is comparability in quantities, conditions, terms and delivery. This price should be adjusted upward or downward to reflect considerations of (1) revised specifications, (2) transportation costs, (3) packaging and packing costs, (4) circumstances of previous purchase, e.g, unrealistically low contract price, (5) changes in labor or material costs during the period from the date of the last award to the expected award date of the proposed 8(a) contract. Price indices, may be utilized as guides to determine the changes in labor or material costs. Comparison of commercial prices for similar items in effect at the time of the prior acquisition with those currently in effect may also be used for this purpose.

(iii) Following agreement between the PCO and SBA on the estimated current fair market price (see (i) and (ii) above), SBA is responsible for determining the allowable amount of any business development expense and issuing a reimbursable order therefor to the PCO in advance of contract award. If SBA requests audit assistance in determining the reasonableness of the proposed total 8(a) price, such assistance will be furnished by the DoD to the extent available. In the event SBA elects not to fund the business development expense, award will not be made to SBA unless the proposed contract price is reduced by the amount of such expense.

(2) *Construction.*

(A) In contracts for construction, it is the stated policy of the SBA to contract with only those small firms which have been approved by the SBA as supporting the policy objectives of 1-705.5(b). In the execution of this policy, the SBA will furnish to the appropriate Departmental Director of Small and Disadvantaged Business Utilization or his designee its request for a commitment(s) showing at least the following information:

(i) the identification of the SBA's contractor(s) and the capabilities and qualifications of the contractor(s) to accomplish various categories of maintenance, repair, alteration and construction work in such specific work project categories as mechanical, electrical, heat and air conditioning, demolition, building, painting, paving, earth work, water front work or general construction work;

(ii) the total extent to which acquisition assistance is needed and an individual identification of the estimated dollar value in each category in which the SBA's contractor(s) have capabilities; for example, electrical up to $100,000, mechanical up to $100,000;

(iii) any other information concerning the capabilities of the proposed contractor(s) which would be pertinent to the evaluation of the requested commitments.

(B) The Department concerned will evaluate the SBA's request for a commitment(s) and determine whether or to what extent the Departments have proposed work projects for which funding is available, in those categories for which the SBA has indicated its contractors have capabilities to perform. In the evaluation of the SBA's request for commitment(s), consideration shall be given to:

(i) the extent to which project(s) of the type requested by the SBA are planned for acquisition in the current fiscal year and, to the extent known, future fiscal years;

(ii) required performance schedule(s);

(iii) work project(s) of similar complexity and nature if there are no known work project(s) of the specific type requested;

(iv) problems encountered in prior work project(s) of the type requested;

(v) impact if slippage occurs in the performance schedule;

(vi) impact if the work project(s) was acquired historically by small business set-aside; and

(vii) any other information concerning the work project(s) or the contractor which is pertinent to the evaluation of the requested commitment(s).

(C) After the SBA request for commitment(s) has been evaluated, the Department, through the Director of Small and Disadvantaged Business Utilization, or his designee, shall notify the Office of Business Development, SBA, Washington, D.C., or its designee, of the extent to which it appears that contracts will be placed with the SBA as requested. This notification shall contain information with regard to the work project(s), as follows:

(i) a summary of the scope of the proposed work;
(ii) detailed Government cost estimates;
(iii) plans and specifications;
(iv) required performance schedules;
(v) any other pertinent and reasonably available data.
The Department, through the Director of Small and Disadvantaged Business Utilization or his designee will notify the appropriate contracting office to identify the work project(s) for negotiation of a Section 8(a) contract with the SBA. Within ten working days after notification, the SBA will establish contact with the contracting office and initiate negotiation of the Section 8(a) contract in support of the SBA and initiate requested commitments. If negotiations with the contracting office have not been initiated by the SBA within the time indicated, the contracting office will notify the Departmental Director of Small and Disadvantaged Business Utilization or his designee of the intent to proceed with the acquisition without further regard to the Section 8(a) procedures, unless additional time is requested by the SBA and such additional time can be granted considering the urgency of the work project.

(D) Provisions of the Miller Act with respect to performance and payment bonds do not apply to the prime contract between the contracting office and the SBA, but shall apply to the contract between the SBA and its contractor unless the SBA waives the bond requirement as provided for in 1-705.5(b)(5).

(E) Certified cost or pricing data, when required by 3-807.3 or needed to determine an estimated current fair market price, shall be obtained by the contracting officer. The request shall provide for the submission in writing by the SBA's contractor of appropriate cost or pricing data with a supporting certificate.

(F) It will be the responsibility of the SBA to provide written certification as to its competency to perform the contract. Such certification may be made in accordance with 1-705.5(c)(1)(D).

(G) Subsequent to agreement with SBA on satisfactory terms and conditions, including an estimated current fair market price, and receipt of the SBA's reimbursable order for any business development expense (if appropriate), the contracting officer shall proceed with the award of a contract to the SBA.

(H) To assist the SBA, contracting offices shall prepare two contract sets as follows:

(i) prepare appropriate contractual documents for use by the SBA with the SBA's contractor. These documents shall be completed, except for signatures and award information (see (c)(I)(i)), based on information requested or furnished by the SBA. This contract shall incorporate the mandatory general provisions and standard forms as required and also shall include the appropriate one of the following statements:

(a) For all contracts excepting civil works contracts of the Corps of Engineers—

> JURISDICTION OVER DISPUTES APPEALS (1979 MAR)
>
> For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Armed Services Board of Contract Appeals.

(b) For civil works contracts of the Corps of Engineers—

> JURISDICTION OVER DISPUTES APPEALS (1979 MAR)
>
> For the purposes of Section 8(d) of the Contract Disputes Act of 1978, Public Law 95-563, the agency board designated as having the jurisdiction to decide appeals from decisions of the Contracting Officer relative to disputes relating to this contract is the Engineer Board of Contract Appeals.

(ii) prepare Standard Form 19 or Standard Form 23 or other appropriate forms for execution with the SBA without incorporating any general provisions. The general provisions are not applicable to the SBA. "10 USC 2304(a)(17)" shall be cited as the authority for negotiations of this contract. This contract shall include a statement as follows:

> It is agreed that the provisions of the "Termination for Convenience," "Changes," "Differing Site Conditions," "Default-Damages for Delay-Time Extensions," "Suspension of Work," "Disputes," "Price Reduction" and "Payments to Contractor" clauses which are included in the contract between the SBA and its Contractor shall be invoked in appropriate cases when requested by the DoD Contracting Officer. If the SBA does not agree with the DoD Contracting Officer's request, the case shall be referred to the Secretary or his designee for decision.

(I) Contract administration functions will be performed by the cognizant contracting office.

(J) The execution and distribution of contract documents shall be in accordance with Section XX. The SBA will be responsible for effecting execution and distribution to the DoD contracting offices and others of contracts executed with its contractor.

(K) Pricing of Construction Acquisitions, and Business Development Expense.

(i) In the determination of an estimated current fair market price for proposed construction contracts, the PCO shall consider data submitted by SBA and its subcontractor, current cost experience for like or similar work, and initial or revised Government estimates of costs of work to be done. When the proposed total 8(a) contract price is no greater than the estimated current fair market price, the award will be made to SBA with full funding by DoD.

(ii) If the total proposed 8(a) contract price exceeds the estimated current fair market price (*i.e.*, it includes a business development expense), such expense shall not be funded by DoD. SBA has stated that it does not generally expect to assume business development expenses for construction. If SBA elects to pay such expenses, as an exception to its general rule, it will issue an SBA reimbursable order for the agreed amount to the DoD PCO in advance of contract award. If SBA requests audit assistance in determining the reasonableness of the proposed 8(a) price, such assistance will be furnished by the DoD to the extent available. In the event SBA elects not to fund the business development expense, award will not be made to SBA unless the proposed contract price is reduced by the amount of such expense.

1-705.6 *Small Business and Disadvantaged Business Goals.*

(a) The Director of Small and Disadvantaged Business Utilization is responsible for the development of overall DoD small business and disadvantaged business goals and for consulting with SBA regarding the establishment of such goals.

(b) Departmental Directors of Small and Disadvantaged Business Utilization are responsible for the development of small business and disadvantaged business utilization goals for subordinate elements within their department. These goals will be further assigned by these subordinate elements as appropriate, such as engineer district offices or individual contracting divisions within a central contracting activity or major commodity command.

(c) Heads of contracting activities are responsible for the attainment of assigned small business and disadvantaged business utilization goals.

(d) Within 60 days after the conclusion of each fiscal year, the Secretaries of the Military Departments and the Directors of Defense agencies shall report to the Secretary of Defense on the extent of participation by small business concerns and disadvantaged business concerns in contracts awarded by their Department. Such reports shall contain appropriate justifications for failure to meet goals established by the Office of the Secretary of Defense, as well as actions planned to increase the rate of participation by such firms in future contract awards. The Office of the Secretary of Defense will submit information to SBA concerning any failure to meet established goals and actions to be taken to improve future performance.

1-706 Set-Asides (Except Small Business-Small Purchase Set-Asides (1-702(c))).

1-706.1 *General.*

(a) Small business and labor surplus area (LSA) set-asides should be considered in the following order of precedence:

(i) Combined small business/LSA set-aside (1-706.7);
(ii) Partial set-aside for LSA firms (1-804.2);
(iii) Total set-aside for small business firms (1-706.5);
(iv) Partial set-aside for small business (1-706.6).

(b) Subject to the order of precedence established in (a) above, any individual acquisition or class of acquisitions, or any appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action is determined to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) insuring that a fair proportion of Government acquisition is placed with small business concerns.

(c) Proposed acquisitions over $2,500 that are not subject to simplified small purchase procedures shall be specifically reviewed for set-aside for exclusive participation by small firms in accordance with 1-706.5. In automated contracting systems, all proposed acquisitions which are not small business-small purchase set-asides (1-702(c)) will be considered for small business set-asides in accordance with 1-706.5. If necessary, the screening for set-asides will be accomplished before entering such requirements into the system.

(d) The contracting officer is responsible for either setting aside a requirement or documenting, in accordance with departmental procedures, why a set-aside is inappropriate. The Small and Disadvantaged Business Utilization Specialist is responsible for reviewing those acquisitions not set aside and for taking action in accordance with 1-706.3 as appropriate.

(e) The determination to make a set-aside may be unilateral or joint. A unilateral determination is one which is made by the contracting officer. A joint determination is one which is recommended by the SBA representative and concurred in by the contracting officer. Insofar as practicable, unilateral determinations rather than joint determinations shall be used as the basis for set-asides. SBA recommendations for set-asides will be limited to those proposed acquisitions over $2,500 and not reserved for small business under the procedures 1-702(c) which, after review by the small business specialist or the contracting officer, have been determined by either party not to meet the criteria for total or partial restriction to small business concerns.

(f) Once a product or service has been acquired successfully by a contracting office on the basis of a small business set-aside, all future requirements of that office for that particular product or service not subject to simplified small purchase procedures shall be acquired on the basis of a repetitive set-aside. This procedure will be followed unless the contracting officer determines that there is not a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices. Withdrawal of a repetitive set-aside will be in accordance with 1-706.3.

(g) If a proposed small business set-aside is estimated to exceed $1,000,000 in value and a bond is required, the contracting officer shall, to the extent practicable, place contracts so as to allow more than one concern to perform the work.

(h) To provide for SBA consideration of individual set-asides at the request of its representative, the contracting office shall make available to him for review at the office (to the extent that he has been granted security clearance) all proposed classified and unclassified acquisitions expected to exceed $2,500 on which unilateral set-asides have not been made by the contracting officer or otherwise reserved for small business under the procedures of 1-702(c).

(i) In addition to individual acquisition set-asides, classes of current and future acquisitions, or portions thereof, of selected items or services may be set aside for exclusive small business participation. The determination to make a class set-aside may be either unilateral or joint. Unilateral set-asides regardless of value will normally be initiated by the contracting officer, but may also be initiated by recommendation of the small business specialist. Class set-asides may be recommended by the SBA representative for only those items or services on which unilateral class set-asides have not previously been made by the contracting officer. The determination to make a class set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen. Class set-asides shall apply only to the contracting office making or participating in the agreement. A class set-aside agreement should specifically identify the items or services subject thereto. Copies of each class set-aside agreement shall be retained at the contracting office. Any class of acquisitions proposed to be totally set aside shall satisfy the requirements of 1-706.5. The set-aside determination for any class of acquisitions proposed to be partially set aside shall specify that it does not apply to any individual acquisition not severable into two or more economic production runs or reasonable lots.

(j) None of the following is, in itself, sufficient cause for not making a set-aside:

- (i) a large percentage of previous acquisitions of the item has been placed with small business concerns;
- (ii) the item is on an established planning list under the Industrial Preparedness Program, except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desires to participate in the acquisition (but see 1-706.6 as to partial set-asides);
- (iii) the item is on a Qualified Products List, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the acquisition (but see 1-706.6 as to partial set-asides);
- (iv) a period of less than 30 days from date of issuance of solicitations is prescribed for the submission of offers;
- (v) the acquisition is classified;
- (vi) small business concerns are considered to be receiving a fair proportion of total contracts for supplies or services;

(vii) a class set-aside of the item or service concerned has been made at some other contracting activity; or

(viii) the item will be described by "brand name or equal"

(k) Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defense Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

(l) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where small business set-asides are involved.

1-706.2 *Contract Authority.* Contracts for total (including combined small business/LSA) or partial set-asides entered into by conventional negotiation (see 1-706.5(b) and 1-706.6(d)) or by "Small Business Restricted Advertising" (see 1-706.5(b)) are negotiated acquisitions and shall cite as authority 10 U.S.C. 2304(a)(1) in the case of a unilateral determination (see 3-201.2(b)(ii)) or 10 U.S.C. 2304(a)(17) and Section 15 of the Small Business Act in the case of a joint determination.

1-706.3 *Review, Withdrawal, or Modification of Set-Asides or Set-Aside Proposals.*

(a) Prior to issuing solicitations each individual acquisition governed by a class set-aside shall be carefully reviewed to ensure that any changes in the magnitude of anticipated requirements, specifications, delivery requirements, or competitive market conditions since the initial approval of the class set-aside are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability. If, prior to award of a contract involving an individual or class set-aside, the contracting officer considers that acquisition of the set-aside from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), he may withdraw a unilateral or joint set-aside determination by giving written notice to the small business specialist and the SBA representative, if available, stating the reasons for the withdrawal. In a similar manner, a unilateral or joint class set-aside may be modified to withdraw one or more individual acquisitions.

(b) Upon a recommendation of the Small and Disadvantaged Business Utilization Specialist that an individual acquisition or class of acquisitions, or portion thereof, be set aside the contracting officer shall promptly either:

(i) concur in the recommendation, or

(ii) disapprove, stating in writing his reasons for disapproval.

(c) If the contracting officer disapproves the recommendation of the Small and Disadvantaged Business Utilization Specialist, the case shall be promptly referred to the SBA representative (if one is assigned and available) for his review. No further appeal action will be taken by the small business specialist. If an SBA representative is not assigned or available, resolution of disagreements on set-asides between the small business specialist and the contracting officer shall be accomplished in accordance with the provisions of 1-706.3(h).

(d) All cases involving the noninitiation of a set-aside, whether resulting from a joint decision of the small business specialist and the contracting officer or a determination by the contracting officer alone, require referral to the SBA representative (if one is assigned and available) for his review. The SBA representative will either concur with the decision of the contracting officer or appeal the case in accordance with the provisions of 1-706.3(e).

(e) If the contracting officer disagrees with the recommendation of the SBA representative regarding a small business set-aside for an individual acquisition (1-706.1(h)) or class of acquisitions or a portion thereof (1-706.1(i)), he shall notify the SBA representative, in writing, within 5 working days. If the SBA representative disagrees with the contracting officer regarding a withdrawal or modification of a joint or unilateral set-aside determination, the SBA representative shall be allowed 2 working days to appeal, in writing, to the chief of the contracting office for decision. The chief of the contracting office shall be allowed 7 working days to provide the SBA representative his decision, in writing, whether or not the acquisition will be set aside. Within 1 working day after receipt of a decision approving the action of the contracting officer, the SBA representative may request the contracting officer, in writing, to suspend contracting action pending a further appeal by the Administrator of SBA to the Secretary of the Department concerned. The SBA shall be allowed 15 working days after making such a written request, within which the Administrator of SBA (i) may appeal to the Secretary of the Department concerned, and (ii) shall notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it shall be deemed that the SBA request to suspend contracting action has been withdrawn and that an appeal to the Secretary was not taken. When an appeal to the Secretary concerned has been taken and the contracting officer has been notified of that fact within the 15-day period, the matter shall be forwarded, with full justification of the action taken, through normal channels, including the appropriate departmental Small Business Advisor as identified in 1-704.2, to the Secretary of the Department concerned.

(f) Any contracting action which has been appealed by the SBA representative shall be suspended pending the decision of the Chief of the Contracting Office. If the decision sustains the contracting officer, and if the SBA representative requests further suspension in accordance with (e) above, the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (e) above), or (ii) the matter is determined by the Secretary of the Department concerned. However, this procedure shall not apply to any particular contracting action that the contracting officer determines must be initiated without delay in order to protect the public interest, and as to which he inserts in the contract file a signed statement of justification approved at a level above the contracting officer. The contracting officer shall promptly give written notice to the SBA representative of any such contracting action initiated.

(g) The Secretary of the Department concerned will have 30 working days to either sustain or deny the appeal for set-aside action. Should it be determined that a decision cannot be made within this time, a later date will be established in writing by the Secretary of the Department concerned to the Administrator, SBA, citing the reasons why additional time is required. A copy of such correspondence will be provided to the Director of Small and Disadvantaged Business Utilization, Office of the Deputy Secretary of Defense.

(h) In those cases where an SBA representative is not assigned or available, and the contracting officer disagrees with the recommendation of the small business specialist regarding a small business set-aside for an individual acquisition or class of acquisitions or a portion thereof and so notifies the small business specialist in writing, or if the small business specialist disagrees with the contracting officer regarding a withdrawal or modification of a set-aside determination, the small business specialist may appeal in writing to the appointing authority (see 1-704.3(a)) for decision. A memorandum of the decision by the appointing authority shall be placed in the contract file. After receipt of a decision from the appointing authority, which shall be final, and if the decision approves the action of the contracting officer, the small business specialist shall forward for information and management purposes complete documentation of the case to the appropriate Departmental Director for Small and Disadvantaged Business Utilization or his designee as identified in 1-704.2.

(i) A signed memorandum of nonconcurrence in a recommended set-aside action or of any withdrawal or modification shall be made and retained in the contract file.

1-706.4 *Reporting for Department of Commerce Procurement Synopsis.* See 1-1003.8.

1-706.5 *Total Set-Asides.*

(a)(1) Subject to the order of precedence established in 1-706.1(a), the entire amount of an individual acquisition or class of acquisitions, including contracts for architectural and engineering services, research, development, test and evaluation, maintenance repair, and construction, except small business-small purchase set-asides (1-702(c)), shall be set aside for exclusive small business participation (1-701.1) if the contracting officer determines that there is a reasonable expectation that (i) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns and (ii) awards will be made at reasonable prices (1-706.3(a)). Total set-asides shall not be made unless such a reasonable expectation exists (but see 1-706.6 as to partial set-asides). Although past acquisition history of the item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-sides, there must also be a reasonable expectation of obtaining from small business the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(2) Every proposed acquisition for construction, including maintenance and repairs, in excess of $2,500 and under $2 million (except dredging under $1 million) shall be considered individually, as though the Small and Disadvantaged Business Utilization Specialist had initiated a set-aside request, and the procedures of 1-706.3 shall apply.

(3) Every proposed acquisition of $2 million or more for construction, or $1 million or more for dredging, shall be considered on an individual acquisition basis under (1) above.

(b) Contracts for total small business set-asides may be entered into by conventional negotiation or by a special method of contracting known as "Small Business Restricted Advertising." The latter method shall be used wherever possible (see also 3-201.3). Where multiyear contracting procedures are appropriate (see 1-322), total set-asides may be made in connection therewith. Solicitations shall be restricted to small business concerns. Small Business Restricted Advertising, including awards thereunder, shall be conducted in the same way as prescribed for formal advertising in Section II, except that bids and awards shall be restricted to small business concerns. Bids received from firms that do not qualify as small business concerns shall be considered as nonresponsive and shall be rejected.

(c) In acquisitions involving total set-asides for small business, each solicitation shall contain the clause in 7-2003.2. The applicable size standards shall be set forth in Section C of the solicitation.

1-706.6 Partial Set-Asides.

(a) Subject to the order of precedence established in 1-706.1(a), a portion of an acquisition, not including construction, shall be set aside for exclusive small business participation when:

(i) the acquisition exceeds $10,000; and

(ii) the acquisition is severable into two or more economic production runs or reasonable lots (see 1-804.1(a)(2)(i)-(v)); and

(iii) one or more small business concerns are expected to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this conclusion the contracting officer shall consult with the Small and Disadvantaged Business Utilization Specialist and may make advanced inquiries to determine the number of interested concerns. Similarly, a class of acquisitions, not including construction, may be partially set aside in accordance with 1-706.1(d). Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures (see 1-322.1(d)).

(b) When a portion of an acquisition is to be set aside for small business pursuant to (a) above, the acquisition shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of small business capacity. Delivery and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c)(1) In acquisitions involving partial set-asides for small business, each solicitation shall contain the clause in 7-2003.3(a)(except see (c)(2) below). The applicable size standards shall be set forth in Section C of the solicitation.

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 7-2003.3(b) may be used.

(d)(1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Acquisition on the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the foregoing clause, provided that, when equal low bids are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under equal low bid procedure of 2-407.6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1-312), or the change of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a).

(3) When the award of the non-set-aside portion has been made to a small business concern and the same concern is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses "*Examination of Records by Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written

offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-set-aside and set-aside portions shall be reported separately.

1-706.7 *Combined Small Business—Labor Surplus Area Set-asides.*

(a) In the acquisition of certain items, the objectives of both the Small Business Act and Defense Manpower Policy (DMP) No. 4A may be attained in a single acquisition. Under this procedure, the total required quantity of an item would be set aside for exclusive participation by small business firms and a portion of that total quantity would be further set-aside for award to small business concerns which are also LSA firms.

(b) For acquisitions exceeding $10,000, the use of this combined small business-LSA set-aside procedure shall be considered. This procedure shall be used in preference to all others when the proposed acquisition meets the criteria for:

(i) total small business set-aside (1-706.5(a)(1)); and

(ii) a partial LSA set-aside (1-804.1(a)(1)).

(c) Contracts utilizing this procedure may be entered into by "Small Business Restricted Advertising," the preferred method, (see 3-201.3), or by conventional negotiation. This set-aside procedure may be used in multi-year contracting (see 1-322). Solicitations shall provide that offers may be submitted by small business firms only and that a part of the total requirement is further set-aside for LSA firms which are also small business concerns. Offers received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(d) (1) In combined small business-LSA set-asides each solicitation shall contain the clause in 7-2003.4(a) (except see (d)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 7-2003.4(b) may be used.

(e)(1) After the award price for the non LSA set-aside portion has been determined, negotiations may be conducted for the LSA set-aside portion. Acquisition of the LSA set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non LSA set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the foregoing clause; provided that, when equal low offers are received on the non LSA set-aside portion from concerns which are equally eligible for the LSA set-aside portion, the concern which is awarded the non LSA set-aside portion (under the equal low bid procedure of 2-407.6) shall have first priority with respect to negotiations for the LSA set-aside portion. The LSA set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non LSA set-aside portion and who accepts the award of additional quantities under the LSA set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1-312), or the changes of prices after award by negotiation of a contract modification.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a).

(3) When the award of the non-set-aside portion has been made to a small business concern and the same small business concern is entitled to receive the set-aside portion of the solicitation, the LSA set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include the clauses "*Examination of Records by the Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the LSA set-aside portion only. Copies of all pertinent documents, including the signed offer, shall be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-LSA-set-aside portion shall be reported separately.

1-706.8 *Automatic Dissolution of Set-Asides.* If the entire set-aside portion is not procured by the method(s) set forth in 1-706.5, 1-706.6, or 1-706.7, the determination referred to in 1-706.1 is automatically dissolved as to the unawarded portion of the set-aside, and such unawarded portion may be procured by advertising or negotiation as appropriate in accordance with existing regulations (see 3-201.2(b)(ii) and 3-210.3 as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1-305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of small business concerns.

1-707 Subcontracting With Small Business and Small Disadvantaged Business Concerns.

1-707.1 *General.*

(a) Pursuant to Section 8(d) of the Small Business Act (15 U.S.C. 637(d)), it is the policy of the United States that small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals, shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency. For purposes of this part, the term "subcontract" means any agreement (other than one involving an employer-employee relationship) to be entered into by a Federal Government prime contractor or subcontractor calling for supplies or services required for the performance of the original contract or subcontract.

(b) Contract modifications (1-201.2) to contracts which do not contain the clause in 7-104.14(a) and which are within the scope of the contract do not require subcontracting plans. However, a modification which reflects the addition of work beyond the scope of the contract and which is made for administrative convenience when a separate contract would otherwise have been appropriate shall require a subcontracting plan if the criteria of 1-707.3(a) and (b) are met.

(c) The value of options and similar provisions shall be included in determining whether the contract may exceed the dollar threshold for subcontract plans. Such options shall be included in the subcontracting plan.

(d) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of 1-707.3(a) and (b), shall contain at least a preliminary basic plan addressing the requirements of 7-104.14(b) and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

(e) Due to their unique circumstances, major weapons system acquisition programs, as well as other complex or sensitive acquisitions involving formal source selection procedures, may necessitate the negotiation of subcontracting plans with all firms in a competitive range in order to afford the maximum practicable opportunity for small business and small disadvantaged business concerns participation and preserve the integrity of the competitive process. When the simultaneous negotiation of such plans is necessary, the solicitation (i) may require offerors to include proposed subcontracting plans in their initial proposals and (ii) may indicate that subcontracting plans will be negotiated concurrently with cost, technical, and management proposals.

1-707.2 *Review Responsibilities.*

(a) *General.* The clause specified in 1-707.3(a) requires the contractor to afford small business concerns the maximum practicable opportunity to participate in contracts consistent with their efficient performance. The clauses specified in 1-707.3(b) and (c) require the submission of subcontracting plans regarding the contractor's obligation to award subcontracts to small business concerns.

(b) *PCO Responsibilities.*

(1) The PCO shall:

(i) assure that a subcontracting plan is submitted when required.

(ii) determine the adequacy of the subcontracting plan.

(iii) consider the contractor's past compliance with the clause specified in 1-707.3(a) and with subcontracting plans as a factor in determining the contractor responsibility.

(iv) determine any fee payable when an incentive is used in conjunction with the subcontracting plan.

(v) notify the SBA's resident Procurement Center Representative (PCR) of and provide him an opportunity to review solicitations for contracts which will include the clause at 7-104.14(a) and which may exceed $1 million in the case of contracts for construction and $500,000 in the case of all other contracts. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the solicitation prior to its public release.

(vi) notify the resident PCR of and provide him the opportunity to review all proposed subcontracting plans under negotiated contracts, including proposed contract modifications, prior to their acceptance by the PCO. Additionally, the apparent successful offeror's proposal and its supporting documentation, if any, which has been furnished to the Government in the course of the negotiations, shall also be made available to the resident PCR upon request. The notice shall be issued in sufficient time to provide the resident PCR a reasonable time to review the subcontracting plan proposal and related documents and to submit advisory recommendations to the PCO. Failure of the PCR to respond to the PCO in a reasonable time shall not delay award of the contract.

(vii) upon award of a contract or other contractual action containing a subcontracting plan, provide a copy of the award document (a copy of the DD 350 will suffice) to the Assistant Regional Administrator for Regional Programs in the SBA region where the principal contract performance is to take place and a copy of the plan to the resident PCR.

(viii) negotiate appropriate revisions to previously approved subcontracting percentage and dollar goals if subsequent modifications will have a major impact on the original planned volume or type of subcontracting effort.

(2) Subcontracting plans shall be reviewed by the PCO for adequacy. All plans must include the six elements required by the clause. The PCO shall accept a plan incorporating an approved master subcontracting plan without further review of the five elements covered by the master plan unless the PCO determines that the master plan does not afford small business and small disadvantaged business maximum practicable opportunity to participate in the performance of the contract. The final plan must be acceptable to the PCO before the award can be made. If, under a formally advertised solicitation, a bidder submits a plan which does not cover each of the six elements, the contracting officer should advise him of the deficiency and request submission of a new plan by a specific date. If, after such notification, the bidder does not submit a complete and responsive plan within the time allotted, the bid should be rejected as nonresponsive. If the plan, although responsive, evidences the bidder's intention not to comply with its obligations under the clause at 7-104.14(a), the contracting officer may find the bidder nonresponsible in accordance with 1-903.

(3) The ACO shall monitor contractor compliance in accordance with 1-406(c)(xlvi) and apprise the PCO. Upon contract completion, if the contractor did not comply in good faith with the subcontracting plan and/or the clause specified in 1-707.3(a), the PCO, based on recommendations from the ACO, shall document the noncompliance in writing and include the reasons. A copy of this documentation shall be provided to the ACO.

(c) *ACO Responsibilities*. The ACO is responsible for assisting in the evaluation of subcontracting plans, and for monitoring, evaluating, and documenting contractor performance under the clause specified in 1-707.3(a) and any subcontracting plan included in a contract. The CAO is responsible for reviewing, evaluating, and approving master subcontracting plans. The SADBUS assigned to the contract administration office shall provide the PCO advice and assistance for use in determining the acceptability of a plan and, through the ACO, shall provide the necessary information and advice to support the PCO, as appropriate, by furnishing:

- (i) documentation on a contractor's performance and compliance with subcontract plans under previous contracts;
- (ii) information on the extent to which the contractor's goals for small business and small disadvantaged business participation are being met;
- (iii) information on whether the contractor's efforts to insure such participation are in accordance with the efforts described in the subcontracting plan;
- (iv) information on whether the contractor is requiring its subcontractors to adopt similar subcontracting plans; and
- (v) immediate notice if, during performance, the contractor is failing to meet his commitments under the clause at 1-707.3(a) or the subcontracting plan.

(d) *Evaluation of Plans and Performance.* The clauses specified in 1-707.3(b) and (c) require the minimum information goals and assurances that each subcontracting plan shall include. There are no detailed standards which apply to every situation. The PCO's consideration of a plan must reflect the circumstances of the particular acquisition. Factors to consider include—

- (i) previous involvement of small business concerns as prime or subcontractors in similar acquisitions;
- (ii) methods of involving small business concerns as subcontractors in such acquisitions; and
- (iii) the type of records which contractors have maintained to demonstrate the methods by which they intend to meet the goals and requirements of the plan.

(e) *Involvement of the Small Business Administration.* The Small Business Administration is authorized to:

- (i) assist both departments and contractors in complying with their responsibilities with regard to subcontracting plans;
- (ii) review any solicitation for any contract which is to include the clause required by 1-707.3(b) or (c) to determine whether maximum practicable opportunity has been afforded small and small disadvantaged businesses to participate as subcontractors in the performance of any contract resulting from any solicitation and to submit its findings, which shall be advisory in nature, to the contracting activity; and
- (iii) evaluate compliance with subcontracting plans, either on a contract-by-contract basis or, in the case of contractors having multiple contracts, on an aggregate basis.

The SBA is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract; specify concerns to which subcontracts shall be granted; or exercise any authority regarding the administration of individual prime contracts or subcontracts. The Office of Minority Small Business and Capital Ownership Development, Small Business Administration, has final authority to determine the eligibility of a concern to be designated as a small disadvantaged business. The SBA Size Appeals Board has final authority to determine the eligibility of a concern to be designated as a small business. The contracting officer, in connection with small business subcontracting requirements, may question the prime contractor concerning a written representation of small business status, or the refusal to accept such written representation by either the prime contractor or a subcontractor, of a concern offering as a subcontractor on a particular acquisition. Other interested parties may also question such representation or refusal. If the matter(s) cannot be resolved, the contractor (prime or sub) is responsible for referring it for a size determination to the SBA Regional Office in which region the concern submitting the written representation has its principal office.

(f) *Evaluation of Subcontract Reports*. The SADBU Specialist shall support the ACO in evaluating a contractor's performance and compliance with its subcontract plans. The original of the Standard Form 294, Subcontracting Report for Individual Contracts, and a copy of the Standard Form 295, Summary Subcontract Report, and reports of periodic reviews of contractor performance shall be retained by the cognizant SADBU Specialist. These reports together with other pertinent information shall be used as a basis for advising the ACO as to contractor's compliance with subcontracting plans.

1-707.3 ***Required Clauses***. In compliance with the requirements of the Small Business Act, the following clauses, as appropriate, shall be included in prime contracts.

(a) The Utilization of Small Business and Small Disadvantaged Business Concerns clause in 7-104.14(a) shall be included in all contracts exceeding $10,000 except those which, including all subcontracts, will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or those which are for services personal in nature.

(b) The Subcontracting Plan for Small Business and Small Disadvantaged Business Concerns (Negotiated) clause in 7-104.14(b) shall be included in all solicitations for negotiated contracts or modifications (including contracts and modifications placed on a sole source basis) which (i) offer subcontracting possibilities; (ii) are expected to exceed $500,000 or, in the case of contracts for the construction of any public facility, $1 million; and (iii) are required to include the clause in 7-104.14(a). However, the clause at 7-104.14(b) shall not be included in any solicitation which (e.g., administrative reclassification by the SBA during performance or uneconomic and unnecessary subcontract decisions to take inappropriate advantage of the incentive).

(f) The small disadvantaged business concern representation in 7-2003.74 shall be included in all solicitations and all contracts which are awarded without reference to a solicitation, other than those involving small purchase. Failure to execute the representation will be deemed a minor informality and the bidder or offeror shall be permitted to satisfy the requirement prior to award.

1-707.4 *Reserved.*

1-707.5 *Reserved.*

1-707.6 *Reserved.*

1-707.7 *Reserved.*

1-708 Women-Owned Business Concerns.

(a) Executive Order 12138 created a National Women's Business Enterprise Policy and prescribed arrangements for developing, coordinating, and implementing a national program for women's business enterprises.

(b) To encourage the use of women-owned businesses in subcontracting, the clause in 7-104.52 shall be included in all contracts expected to exceed $10,000 except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands; and (ii) contracts for services which are personal in nature.

Part 8—Labor Surplus Area Concerns

1-800 Scope of Part. This Part sets forth Department of Defense policy and procedures with respect to aiding labor surplus areas in the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands. This Part implements Defense Manpower Policy No. 4A, 27 Oct 1977 (32A CFR Part 134), and the Small Business Act as amended (15 USC 631), and U.S. Department of Labor Regs (20 CFR Part 654). Defense Manpower Policy No. 4A states the policy of the Government to encourage the placing of contracts and facilities in labor surplus areas and to assist such areas in making the best use of their available resources.

1-801 Definitions.

1-801.1 *Labor Surplus Area Concerns.* The term "labor surplus area concern" means a concern that agrees to perform or cause to be performed a substantial proportion of a contract in labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in labor surplus areas if the aggregate costs that will be incurred by the concern or its first tier subcontractors, on account of manufacturing or production performed in labor surplus areas amount to more than 50% of the contract price.

Example A. ABC Company, manufacturing in a labor surplus area, bids on a contract at $1,000. ABC Company will incur the following costs:

Direct labor	$230
Overhead	275
Purchase of materials from RST Company, which manufactures the materials in a full employment area	425

ABC Company qualifies as a substantial labor surplus area concern since it will incur costs in a labor surplus area amounting to more than 50% of the contract price.

Example B. DEF Company, manufacturing in a surplus area bids on a contract at $1,000. DEF Company will incur the following costs:

Direct labor	$200
Overhead	200
Purchase of materials from UVW Company, which is located in a labor surplus area but which merely distributes the materials from stocks on hand (the materials having been manufactured by UVW's supplier)	550

DEF Company does not qualify as a labor surplus area concern since its manufacturing and production costs do not exceed 50% of the contract price regardless of whether UVW's supplier manufactures in a labor surplus area.

1-801.2 *Labor Surplus Area.* The term "labor surplus area" means a geographic area which at the time of award is classified as such by the Department of Labor and listed as such by that Department in its publication "Listing of Eligible Labor Surplus Areas Under DMP No. 4A and Executive Order 10582".

1-801.3 *Small Business Concern.* See 1-701.

1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labor surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with procurement objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place subcontracts with LSA concerns. In carrying out this policy, and to accommodate the small business policies of Section I, Part 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns, and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labor Surplus Area Program within their respective offices. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to 1-704.3.

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1-803 Application of Policy.

(a) Within the policy set forth in 1-802, the following shall be applied to contracts which are estimated to exceed $10,000:

- (i) negotiated contracts shall, where acquisition objectives permit, be awarded to labor surplus area concerns; *provided*, that in no case shall price differentials be paid for the purpose of carrying out this policy;
- (ii) when appropriate, acquisitions shall be made from LSA concerns by partial set-aside procedures, in accordance with 1-706.7 or 1-804 (but no total set-aside shall be made for LSA concerns) and such set-asides shall be given preference over any small business set-aside;
- (iii) each Department shall assure that information identifying LSA is disseminated promptly to contracting personnel;
- (iv) when less than a complete bidders list is to be used pursuant to 2-205.4, at least a pro rata number of prospective LSA concerns shall be solicited;
- (v) subcontracting with concerns in LSA shall be encouraged in accordance with 1-805;
- (vi) See 6-1403.1(a)(2) regarding purchases from qualifying country sources (see 6-001) where LSA set-asides are involved.

(b) Records of the total value of all contracts in excess of $10,000 placed with LSA concerns during each fiscal year, and reports based thereon, are maintained by each Department through the Department of Defense Reporting System described in 1-110 and Section XXI, Part 1. Accordingly, each Department, in soliciting bids and proposals for any contract estimated to exceed $10,000 shall request from any offeror, or other source, any information needed to determine whether the offeror is a LSA concern. Contract files shall be documented to indicate the extent to which LSA concerns were considered and the action taken with respect thereto.

1-804 Partial Set-Asides for Labor Surplus Area Concerns.

1-804.1 *General.*

(a)(1) In accordance with the policy set forth in 1-802 and 1-803 (see also 1-706.7), a portion of each acquisition shall be set aside for LSA concerns if:

- (i) the acquisition is severable into two or more economic production runs or reasonable lots; and
- (ii) one or more LSA concerns are expected to qualify as LSA concerns and to have the capability to furnish a severable portion of the acquisition at a reasonable price, except that a partial set-aside shall not be made if there is a reasonable expectation that offers will be received from only two concerns with capability (one concern which will not qualify as a LSA concern and one concern which will qualify as a LSA concern) unless authorized by the Head of the Contracting Activity on a case-by-case basis. Before reaching this con-

clusion, the contracting officer shall consult with the LSA specialist and may make advance inquiries to determine the number and expected classification of interested concerns.

(2) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate:

(i) price and procurement history of the items,
(ii) open industry capacity,
(iii) startup cost including special tooling requirements,
(iv) delivery schedule, and
(v) nature of item and quantity being procured.

Before a portion or portions, constituting more than 50% of the total requirement may be set aside, a determination must be made that there is a reasonable expectation the action proposed will not result in the payment of a price differential. The determination and supporting information will be made part of the contract file.

(3) In furtherance of the policy to assure that a fair proportion of procurements is placed with small business concerns, each LSA set-aside shall provide that, in addition to LSA concerns, small business concerns not performing in such areas are also eligible for participation in the set-aside for such quantities thereof as are not awarded to LSA concerns. In this respect, see the provisions of 1–804.2(b) for notice to offerors, and 1–804.2(c) for conduct of set-aside negotiations.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(i) a large part of previous procurements of the item in question has been placed with LSA concerns;
(ii) the item to be purchased is on an established planning list under the Industrial Readiness Planning Program;
(iii) the item to be purchased is on a Qualified Products List;
(iv) a period of less than 30 days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of offers;
(v) the procurement is classified; or
(vi) LSA concerns are receiving a fair proportion of contracts.

(c) Procurement of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.—Canadian Defense Development Sharing Program shall not be set aside for LSA. Identification of the supplies covered by the Program will be in accordance with Departmental procedures.

1–804.2 *Set-Aside Procedures.*

(a) When a portion of a procurement is to be set aside pursuant to 1–804.1, the procurement shall be divided into a non-set-aside portion and set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of LSA concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

BEST DOCUMENT AVAILABLE

(b)(1) In procurements involving set-asides pursuant to this Part, each solicitation and resulting contract shall contain the clause in 7–2003.5(a) (except see (b)(2) below).

(2) When experience indicates that token bidding, block bidding, tie-in bidding, or similar devices may occur, the alternate clause in 7–2003.5(b) may be used.

(c)(1) After the award price for the non-set-aside portion has been determined, negotiations may be conducted for the set-aside portion. Procurement of the set-aside portion shall in all instances be effected by negotiation. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted in the order of priority as indicated in the clauses required by 1–804.2(b)(1) and (2) above; *provided* that, when equal low offers are received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedure of 2–407.6) shall have first priority with respect to negotiations for the set-aside portion. The set-aside portion shall be awarded as provided in the clause. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the procurement. This does not prevent acceptance by the contracting officer of voluntary reductions in price from the low eligible offeror prior to award, acceptance of voluntary refunds (see 1–312), or the change of prices after award by negotiation of a contract modification. If the entire set-aside portion cannot be awarded by the method described herein, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations (see 3–201.2(b)(i) and 3–210.3 as to negotiation). Since a considerable time may have elapsed since the initiation of the requirement, contracting officers, prior to issuing a new solicitation, shall review the required delivery schedule (see 1–305.2) to insure that it is realistic in the light of all relevant factors including the capabilities of LSA concerns.

(2) Offers obtained under the provisions of the set-aside clause from firms eligible for the set-aside portion of the requirement shall be in writing and shall include (i) agreement as to the established set-aside price for the available set-aside quantity, (ii) agreement as to the required delivery, (iii) agreement that all other terms and conditions of the original solicitation will apply to the set-aside award, and (iv) agreement to inclusion of the clauses "*Examination of Records by the Comptroller General*" in 7–104.15 and "*Audit by Department of Defense*" in 7–104.41(a).

(3) When the award of the non-set-aside portion has been made to a concern which is entitled to receive the set-aside portion of the solicitation, the set-aside portion may be added to the basic contract by supplemental agreement utilizing Standard Form 30. The supplemental agreement shall (i) include a reference to the contractor's letter offering on the set-aside quantity, (ii) state the price and delivery schedule applicable to the set-aside quantity, and (iii) include

the clauses "*Examination of Records by Comptroller General*" in 7-104.15 and "*Audit by Department of Defense*" in 7-104.41(a), applicable to the set-aside portion only. Copies of all pertinent documents, including the signed offer, should be attached. The supplemental agreement shall be signed by the contracting officer but need not be signed by the contractor since his signature on the attached offer will be deemed sufficient.

(4) When the award for the non-set-aside portion has been made to a firm other than the concern entitled to receive the set-aside portion of the solicitation, award of the set-aside portion will be made utilizing Standard Form 26. The offers obtained and the award utilized shall reference and include the same data indicated in paragraphs (2) and (3) above. Also, the award shall reference in Block 26 of Standard Form 26, the applicable solicitation and the contractor's written offer, and copies of the solicitation and offer shall be attached. The Standard Form 26 shall be signed by the contracting officer but need not be signed by the contractor. The contractor's signature on the attached offer will be deemed sufficient.

For purposes of 21-102 and 21-201, the non-set-aside and set-aside portions shall be reported separately.

1-804.3 *Withdrawal of Set-Asides*. If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, *e.g.*, because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation as appropriate in accordance with existing regulations. A signed memorandum setting forth the basis of the withdrawal of any set-aside shall be made and retained.

1-804.4 *Contract Authority*. Contracts for set-aside made under this Part 8 shall cite as authority 10 U.S.C. 2304(a)(1). For reporting purposes, see 3-201.2(b)(i) for contracts awarded to labor surplus area concerns and 3-201.2 (b)(ii) for contracts awarded to small business concerns which are not labor surplus area concerns.

1-805 Subcontracting With Labor Surplus Area Concerns.

1-805.1 *General Policy*.

(a) It is the policy of the Government to promote equitable opportunities for labor surplus area concerns to compete for defense subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labor surplus areas in the order of priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere.

(b) To more effectively carry out the Government's policy objectives stated in (a) above, prime contractors and subcontractors having labor surplus area subcontracting programs must be informed of (1) the Government's evaluation of their efforts in carrying out an effective labor surplus area subcontracting program, (2) any specific noted deficiencies in their Labor Surplus Area Subcontracting Programs, and (3) any areas of outstanding achievement where they may have exceeded contractual requirements. To motivate a contractor to improve his program, he should be advised in general terms as to the type of actions will result in a reward, penalty, or no impact on profit or fee (see 3-808.5(d)). Any evaluation and remarks to the contractor, including areas of suggested improvement and areas where the contractor has exceeded contractual requirements, must be documented to furnish a basis for evaluation in connection with future awards.

1-805.2 *Labor Surplus Area Subcontracting Program*. The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. These obligations are in addition to those required by the minority business enterprise subcontracting program (1-332) and the small business subcontracting program (1-707). In contracts which range from $10,000 to $500,000, the contractor undertakes the simple obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in labor surplus areas where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in 1-805.3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause required by 1-805.3(b), to undertake a number of specific responsibilities designed to insure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

1-805.3 *Required Clauses*.

(a) The Utilization of Labor Surplus Area Concerns clause in 7-104.20(a) shall be inserted in all contracts which may exceed $10,000, except:

(1) contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, Puerto Rico, and the Trust Territory of the Pacific Islands;

(2) contracts for services which are personal in nature;

(3) contracts for construction; and

(4) contracts with the petroleum and petroleum products industry.

(b) The Labor Surplus Area Subcontracting Program clause in 7-104.20(b) shall be included in all contracts which may exceed $500,000, but which contain the clause required by (a) above and which, in the opinion of the purchasing activity, offer substantial subcontracting possibilities. Prime contractors who are to be awarded contracts that do not exceed $500,000, which in the opinion of the purchasing activity offer substantial subcontracting possibilities, shall be urged to accept the clause.

1-805.4 *Reserved.*

1-806 Depressed Industries.

1-806.1 *General.* When an entire industry is depressed, the Director of the Federal Preparedness Agency of the General Services Administration may, under Defense Manpower Policy No. 4A, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Federal Preparedness Agency and such industries will be given special treatment as specified therein. Paragraph 1-806.2 reflects pertinent requirements with respect to the Petroleum and Petroleum Products Industry.

1-806.2 *Petroleum and Petroleum Products Industry. (Notification No. 58).* There shall be no labor surplus area set-asides in this industry.

Part 9—Responsible Prospective Contractors

1–900 Scope of Part. This Part sets forth (i) general policy with respect to responsibility of prospective contractors, (ii) minimum standards for responsible prospective contractors, (iii) requirements and procedures for determination of responsibility, and (iv) policy with regard to determination of subcontractor responsibility.

1–901 Applicability. This Part applies to procurement, advertised or negotiated, from contractors located in the United States, its possessions, or Puerto Rico and shall be applied in other places except where inconsistent with the laws and customs of the place where the prospective contractor is located. It is not applicable to procurement from (i) other governments (but see 1–904.3), including State and local governments; (ii) other United States Government departments and agencies, or their instrumentalities (such as Federal Prison Industries, Inc.); or (iii) National Industries for the Blind.

1–902 General Policy. Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. A responsible prospective contractor is one which meets the standards set forth in 1–903.1 and 1–903.2, and such special standards as may be prescribed in accordance with 1–903.3 and by overseas commanders. The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional procurement or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because he submits the lowest bid or offer. A prospective contractor must demonstrate affirmatively his responsibility, including, when necessary, that of his proposed subcontractors. The contracting officer shall make a determination of nonresponsibility if, after compliance with 1–905 and 1–906, the information thus obtained does not indicate clearly that the prospective contractor is responsible. Recent unsatisfactory performance, in either quality or timeliness of delivery, whether or not default proceedings were instituted, is an example of a problem which the contracting officer must consider and resolve as to its impact on the current procurement prior to making an affirmative determination of responsibility. Doubt as to productive capacity or financial strength which cannot be resolved affirmatively shall require a determination of nonresponsibility.

1–903 Minimum Standards for Responsible Prospective Contractors.

1–903.1 *General Standards*. Except as otherwise provided in this paragraph 1–903, a prospective contractor must:

(i) have adequate financial resources, or the ability to obtain such resources as required during performance of the contract (see Defense Contract Financing Regulations, Part 2, Appendix E, and any amendments thereto; see also 1–904.2 and 1–905.2; for SBA certificates of competency, see 1–705.4);

(ii) be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments, commercial as well as governmental (for SBA certificates of competency, see 1–705.4);

(iii) have a satisfactory record of performance (contractors who are seriously deficient in current contract performance, when the number of contracts and the extent of deficiency of each are considered, shall, in the absence of evidence to the contrary or circumstances properly beyond the control of the contractor, be presumed to be unable to meet this requirement). Past unsatisfactory performance, due to failure to apply necessary tenacity or perseverance to do an acceptable job, shall be sufficient to justify a finding of nonresponsibility. (In the case of small business concerns, see 1–705.4 and 1–905.2.);

(iv) have a satisfactory record of integrity (In the case of a small business concern, see 1–705.4); and

(v) be otherwise qualified and eligible to receive an award under applicable laws and regulations, *e.g.*, Section XII, Part 8.

1–903.2 *Additional Standards.*

(a) *Standards for Production, Maintenance, Construction, and Research and Development Contracts.* In addition to the standards in 1–903.1, in procurement involving production, maintenance, construction (see 18–106), or research and development work (and in other procurement as appropriate), a prospective contractor must:

(i) have the necessary organization, experience, operational controls and technical skills, or the ability to obtain them (including where appropriate, such elements as production control procedures, property control system and quality assurance measures applicable to materials produced or services performed by the prospective contractor and subcontractors (see 1–903.4)); and

(ii) have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Where a prospective contractor proposes to use the facilities or equipment of another concern, not a subcontractor, or of his affiliate (see 2–201(a)B(ii) and (b)(xvii)), all existing business arrangements, firm or contingent, for the use of such facilities or equipment shall be considered in determining the ability of the prospective contractor to perform the contract; see also 1–904.2.

(b) *Standards for Food.* Procurement of food shall be made only from those sources which, in addition to meeting the standards in 1–903.1, are approved with respect to sanitation in accordance with standards and procedures prescribed in AR 40–657, NAVSUP Instruction 4355.4A, AFR 163–2 and MCO P10110.31B.

1–903.3 *Special Standards.* When the situation warrants, contracting officers shall develop with the assistance of technical personnel or other specialists, special standards of responsibility to be applicable to a particular procurement or class of procurements. Such special standards may be particularly desirable when a history of unsatisfactory performance has demonstrated the need for insuring the existence of unusual expertise or specialized facilities necessary for adequate contract performance. The resulting standards shall form a part of the solicitation and shall be applicable to all bidders or offerors.

1-903.4 *Ability to Meet Certain Minimum Standards.* Except to the extent that a prospective contractor proposes to perform the contract by subcontracting (see 1-906), acceptable evidence of his "ability to obtain" such things as resources, equipment, facilities, and personnel (see 1-903.1(i) and 1-903.2) shall normally be a commitment or explicit arrangement, which will be in existence at the time the contract is to be awarded, for the rental, purchase or other acquisition of such resources, equipment, facilities, or personnel.

1-904 Determinations of Responsibility and Nonresponsibility.

1-904.1 *Requirement.* No purchase shall be made from, and no contract shall be awarded to, any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible within the meaning of 1-902. The signing of the contract by the contracting officer constitutes such a determination; therefore, he must assure himself that the applicable requirements of 1-903 are met before signing the contract or order. When a certificate of competency has been issued, the factors covered by the certificate of competency may be accepted by the contracting officer without further inquiry. When a bid or offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, a determination of nonresponsibility shall be made, signed, and placed in the file. The determination of nonresponsibility shall set forth the basis of the determination. In making a determination of responsibility or nonresponsibility for purchase or contract awards of $100,000 and over, performance data should be acquired and considered when the contracting officer deems it necessary. Supporting documents or reports, including any pre-award survey reports (see 1-905.4) and SBA certificate of competency (see 1-705.4), shall be included in the contract file.

1-904.2 *Affiliated Concerns.*

(a) Affiliated concerns (see 2-201(a)B(ii) and (b)(xvii) shall be considered as separate entities in determining whether the one of them which is to perform the contract meets the applicable standards for a responsible prospective contractor (but see 1-701.1 with respect to status as a small business concern).

(b) Notwithstanding the above, the record of performance and integrity of affiliated concern which may adversely affect the responsibility of the prospective contractor shall be considered by the contracting officer when making a determination of responsibility.

1-904.3 *Acquisitions From Concerns in Qualifying Countries.* Awards to concerns in qualifying countries are subject to this Part 9 (see 6-1403.1(b)). A Canadian firm proposed by the Canadian Commercial Corporation (CCC) as its subcontractor generally shall be accepted by the contracting officer under the provisions of 1-906 as the basis for his determination under 1-904.1. In cases where the firm proposed by CCC is so accepted, pre-award survey forms need not be completed. When the CCC proposal is not consistent with other information which may be available to the contracting officer, he shall request from CCC and any other sources whatever additional information or plant surveys he may deem necessary to make the determination of responsibility of sources proposed by CCC. Such additional data may be requested on the pre-award survey forms or on any other forms. Upon request, CCC shall be furnished an explanation of the reasons for rejection of its proposed firm.

1-905 Procedures for Determining Responsibility of Prospective Contractors.

1-905.1 *General.*

(a) Before making a determination of responsibility (see 1-904), the contracting officer shall have in his possession or obtain information sufficient to satisfy himself that a prospective contractor currently meets the minimum standards set forth in 1-903, to the extent that such standards are applicable to a specific procurement.

(b) Maximum practicable use shall be made of currently valid information on file or within the knowledge of personnel in the Department of Defense. Each Department, shall at such level and manner as it deems appropriate, maintain useful records and experience data for the guidance of contracting officers in the placement of new procurement, and shall inform its contracting officers and the other Departments of the means of access thereto. Notwithstanding this direction contract administration offices shall maintain files of information reflecting upon the ability of contractors to perform Government contracts successfully.

(c) Any purchasing office becoming aware of circumstances which, for any reason, casts doubt upon the ability of a contractor to perform contracts successfully, shall immediately advise the cognizant contract administration office. A contract administration office, upon being notified by a purchasing office of unfavorable information affecting a contractor under its cognizance, or upon developing unfavorable information during the course of contract administration activities, shall advise the purchasing offices of the other Departments. When a contract administration office is requested to perform a pre-award survey and it has been notified of the existence of unfavorable information relative to the contractor, it shall obtain the details including full supporting information. Careful and full consideration shall be given such information. If a contract administration office becomes aware of a prospective contract award to a contractor about whom unfavorable information exists and no pre-award survey has been requested, it shall (i) immediately notify the purchasing office concerned, and (ii) secure the details of such unfavorable information as if it were performing a pre-award survey and advise the purchasing office concerned. The purchasing office shall give full consideration to such advice in determining whether an award should be made.

(d) Generally, information necessary to make determinations of responsibility shall be obtained only concerning prospective contractors within range for an award.

1-905.2 *When Information Will Be Obtained.* Generally, information regarding the responsibility of a prospective contractor (including pre-award surveys (see 1-905.4) when deemed necessary) shall be obtained promptly after bid opening or receipt of proposals. However, in negotiated procurements, especially those involving research and development, such information may be obtained before the issuance of requests for proposals. Notwithstanding the foregoing, information regarding financial resources (see 1-903.1(i)) and performance capability (see 1-903.1 (ii)) shall be obtained on as current a basis as feasible with relation to the date of contract award.

1-905.3 *Sources of Information.* Information regarding the responsibility of prospective contractors shall be sought among the following sources:

(i) The Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors (see 1-601), and the GSA Consolidated List of Administrative Debarments by Executive Agencies (see 1-603.2).

(ii) *From the prospective contractor*—including representation and other information contained in or attached to bids and proposals; replies to questionnaires; financial data, such as balance sheets, profit and loss statements, cash forecasts, financial history of the contractor and affiliated concerns; current and past production records; personnel records; and lists of tools, equipment, and facilities; written statements or commitments concerning financial assistance and subcontracting arrangements; and analyses of operational control procedures. Where it is considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition or for other reasons, prospective contractors may be required to submit affidavits concerning their ability to meet any of the minimum standards set forth in 1-903, and company ownership and control (see 2-201(a)B(ii) and (b)(xvii)).

(iii) *Existing information within the Department of Defense*—including records on file and knowledge of personnel within the purchasing office making the procurement, other purchasing offices, related activities, contract administration offices, audit activities, and offices concerned with contract financing.

(iv) *Publications*—including credit ratings, trade and financial journals, business directories and registers.

(v) *Other sources*—including suppliers, subcontractors and customers of the prospective contractor; banks and financial companies; commercial credit agencies; Government departments and agencies; purchasing and trade associations; better business bureaus and chambers of commerce.

1-905.4 *Pre-Award Surveys.*

(a) *General.* A pre-award survey is an evaluation by a contract administration office of a prospective contractor's capability to perform under the terms of a proposed contract. Such evaluation shall be used by the contracting officer in determining the prospective contractor's responsibility. The evaluation may be accomplished by use of (i) data on hand, (ii) data from another Government agency or commercial source, (iii) an on-site inspection of plant and facilities to be used for performance on the proposed contract, or (iv) any combination of the above. Pre-award surveys shall be conducted in accordance with Appendix K, Pre-Award Survey Procedures.

(b) *Circumstances Under Which Performed.* A pre-award survey shall be required when the information available to the purchasing office is not sufficient to enable the contracting officer to make a determination regarding the responsibility of a Prospective Contractor (but see (c) below). The contracting officer shall request a pre-award survey on Pre-Award Survey of Offeror-General (DD Form 1524) (see F-200.1524) in the detail commensurate with the dollar value and complexity of the procurement. A pre-award survey should not be requested for a procurement valued at $25,000 or less, except where risk associated with any factor is judged by the contracting officer to warrant the cost of a pre-award survey, or where the case requires referral to the SBA for possible Certificate of Competency action, in accordance with 1-705.4. If during the performance of a pre-award survey, the applicable contract administration activity conducting the survey discovers that the small business being surveyed has received preferential treatment on an ongoing contract in accordance with Section 8a of the Small Business Act, or has received an SBA Certificate of Competency during the last 12 months, the appropriate SBA field office shall be contacted and its advice sought prior to making an affirmative recommendation on the responsibility of the contractor. In requesting a pre-award survey, the contracting officer shall call to the attention of the contract administration office any factors which should receive special emphasis and state whether the purchasing office will participate in the survey (see Appendix K-203.1(b). The factors selected by the contracting officer shall be applicable to all firms responding to the solicitation and shall be considered in all pre-award surveys performed for the same solicitation. In the absence of specific instructions from the purchasing office, the scope of the pre-award survey shall be determined by the contract administration office and a normal time frame of seven working days after receipt of request shall be allowed for conducting the survey and submitting the report, recognizing that in unusual circumstances exception from the normal time frame may be requested.

(c) *Workload and Financial Capacity*. Regardless of the apparent sufficiency of information available to the purchasing office indicating responsibility with respect to the standards set forth in 1-903.1(i) and (ii), in procurements which are significant either in dollar value or in the critical nature of the requirement, consideration shall be given to requesting the contract administration office to verify information regarding current workload and financial capacity.

(d) *Walsh-Healey Public Contracts Act Eligibility Determination*. The contracting officer shall accept the representation by the offeror that the firm is either a manufacturer or regular dealer pursuant to the requirements of the Walsh-Healey Public Contracts Act (Section XII, Part 6) unless—

(i) the contracting officer has knowledge that raises the question of the validity of the representation;
(ii) a protest has been lodged pursuant to 12-604;
(iii) the offeror in line for contract award has not previously been awarded a contract subject to the Act by the individual acquisition office; or
(iv) a preaward investigation or survey of such offeror's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, and subcontracting and labor resources of such offeror.

Where these conditions exist, the PCO shall determine the Walsh-Healey Act eligibility status of the offeror, based on available evidence, including preaward surveys, experience of other acquisition offices, information available from the cognizant contract administration office or information provided directly by the offeror.

1-906 Subcontractor Responsibility.

(a) To the extent that a prospective contractor proposes to perform the contract by subcontracting, determinations of prospective subcontractors' responsibility may be necessary in order to determine the responsibility of the prospective prime contractor. Determinations concerning prospective subcontractor's responsibility shall generally be a function performed by the prospective prime contractor. (But see 1-603.4(c).) A prospective prime contractor may be required to (i) indicate, in writing, the responsibility of proposed subcontractors, or (ii) show evidence of an acceptable and effective purchasing and subcontracting system which encompasses a method for determining subcontractor capability.

(b) Notwithstanding the general responsibility of a prospective contractor to demonstrate the responsibility of his prospective subcontractors, it may be in the Government's best interest to make a direct determination of the responsibility of one or more prospective subcontractors prior to award of the prime contract. Examples of when this may be particularly suitable are the procurements of (i) medical items, (ii) supplies or services which are so urgently needed that it is necessary for the Government to go beyond the normal process in determining contractor responsibility, and (iii) supplies or services, a substantial portion of which will be subcontracted. The determination of responsibility of a proposed subcontractor by the Government shall be based on the same factors as are applicable in a determination of responsibility of a prospective prime contractor.

1-907 Disclosure of Pre-Award Data. Except as provided in 1-329, data including information obtained from a pre-award survey, accumulated for purposes of determining the responsibility of a prospective contractor shall not be released outside the Government and shall not be made available for inspection by individuals, firms, or trade organizations (see 1-329.3(c)(5)). Such data may be disclosed to, or summarized for, other elements within the Government on their request, and shall be made available to Department of Defense procurement personnel upon request in accordance with 1-905.1. Prior to making a determination of responsibility, such data may be discussed with the prospective contractor as determined necessary by the purchasing office. After an award, the findings of the pre-award survey may be discussed by the contracting officer with the company surveyed as provided in 2-408 and 3-508, or if appropriate, by the head of the contract administration office or his designee.

GENERAL PROVISIONS

Part 10—Publicizing Procurement Actions

1-1001 General Policy. It is Department of Defense policy to increase competition by publicizing procurements which offer competitive opportunities for prospective prime contractors or subcontractors, thus assisting small business and labor surplus area concerns and broadening industry participation in Defense procurement programs.

1-1002 Dissemination of Information Relating to Invitations for Bids and Requests for Proposals.

1-1002.1 *Availability of Invitations for Bids and Requests for Proposals at the Contracting Office.* A reasonable number of copies of invitations for bids and requests for proposals, which are required to be publicized in the *Commerce Business Daily*, including specifications and other pertinent information, shall be maintained at the contracting office. Upon request, prospective contractors not initially solicited may be mailed or otherwise provided copies of such invitations for bids or requests for proposals to the extent they are available. However, for any contract to be let by any department, it shall provide to any small business concern upon its request: (i) a copy of bid sets and specifications with respect to such contract; (ii) the name and telephone number of an employee of such department to answer questions with respect to such contract; and (iii) adequate citations to each major Federal law or departmental rule with which such business concern must comply in performing such contract. When a solicitation for proposals has been limited as a result of a determination that only a specified firm or firms possess the capability to meet the requirements of an acquisition, requests for proposals shall be mailed or otherwise provided upon request for firms not solicited, but only after advice has been given to the firm making the request as to the reasons for the limited solicitation and the unlikelihood of any other firm being able to qualify for a contract award under the circumstances; but see 4-106.2. In addition, to the extent that invitations for bids or requests for proposals are available, they shall be provided on a "first-come-first-served" basis, for pick up at the contracting office, to publishers, trade associations, contracting information services, and other members of the public having a legitimate interest therein (for construction, see 18-205(c)); otherwise the contracting office will make copies available to members of the public pursuant to Appendix L. In determining the "reasonable number" of copies to be maintained, the contracting officer shall consider, among other things, the extent of initial solicitation, reproduction costs, the nature of the acquisition, whether access to classified matter is involved, the anticipated requests for copies based upon responses to synopses and other means of publication in previous similar situations, and the fact that publishers and others who disseminate information regarding proposed acquisitions normally do not require voluminous specifications or drawings. With regard to classified acquisitions, the foregoing instructions apply to the extent consistent with Departmental security instructions and procedures.

1-1002.2 *Limited Availability of Certain Specifications, Plans, and Drawings.* When the purchasing activity is not in possession of complete sets of specifications, plans, and drawings (as in some procurements of airframes, shipbuilding, or major weapons systems), or the drawings and specifications are classified, or are so voluminous that display and distribution in accordance with 1-1002 is impracticable, the solicitation shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined (see 1-1203).

1-1002.3 *Reserved.*

1-1002.4 *Displaying in Public Place.* A copy of each solicitation for an unclassified procurement in excess of $2,500 which provides at least ten calendar days for submission of offers shall be displayed at the contracting office, and, if appropriate, at some additional public place from the date issued until seven days after bids or proposals have been opened.

1-1002.5 *Information Releases to Newspapers and Trade Journals.* A brief announcement of the proposed purchase may be made available to newspapers, trade journals, and magazines for publication without cost to the Government.

1-1002.6 *Paid Advertisements in Newspapers and Trade Journals.* See Section IV, Part 8.

1-1003 Synopses of Proposed Procurements.

1-1003.1 *General.*

(a) Except for procurements described in (b) and (c), every proposed advertised or negotiated procurement, including those basic ordering agreements which:

- (i) involve specific supplies or services;
- (ii) are supported by appropriate determinations and findings limiting future orders thereunder to the basic ordering agreement contractor; and

modifications to existing contracts when new funds are obligated for additional supplies and services made in the United States, its possessions, and Puerto Rico which may result in an award in excess of $10,000 shall be publicized promptly in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards". When an item is assigned or is within a Federal Supply Class assigned for procurement in Section V, Part 12, and is purchased by other than the assigned Department, the synopsis shall cite the applicable purchase exclusion number from 5-1201.1 or 5-1201.2(a). Modifications to an existing contract resulting from price changes, engineering changes, overruns, definitization of letter contracts, orders under a basic ordering agreement which was previously synopsized in accordance with 3-410.2(c)(4), and other similar transactions need not be publicized in the *Commerce Business Daily*.

(b) Only those classified procurements, where the information necessary to be included in the Synopsis cannot be worded in such a manner so as to preclude the disclosure of classified information, or where the mere disclosure of the Government's interest in the area of the proposed procurement would violate security requirements, shall not be publicized in the Synopsis. All other classified

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procurements shall be publicized in the Synopsis, even though access to classified matter might be necessary in order to submit a proposal or to perform the contract (see 1-1003.9(f)(3)). The intent of the exception for classified procurement in the synopsis requirements of P.L. 87-305 is not to exempt every classified procurement from publicizing, but to provide a safeguard against violating security requirements.

(c) The following need not be publicized in the Synopsis (Exceptions 1 through 9 — Item 13 of the DD Form 350):

(i) see (b) above;
(ii) procurement of perishable subsistence;
(iii) procurement of electric power or energy, gas (natural or manufactured), water, or other utility services;
(iv) procurement (whether advertised or negotiated) which is of such urgency that the Government would be seriously injured by the delay involved in permitting the date set for receipt of bids, proposals, or quotations to be more than 15 calendar days from the date of transmittal of the synopsis or the date of issuance of the solicitation, whichever is earlier;
(v) procurement to be made by an order placed under an existing contract other than an order placed under a Basic Ordering Agreement;
(vi) procurement to be made from or through another Government department or agency, including procurements from the SBA using the authority of section 8(a) of the Small Business Act, or a mandatory source of supply such as an agency for the blind under the blind-made products program;
(vii) procurement of personal and professional services other than architect-engineer services (see 1-1003.4(b)(1));
(viii) procurement from educational institutions to be negotiated under 3-205;
(ix) procurement in which only foreign sources are to be solicited.

1-1003.2 *Time of Publicizing.* To allow concerns which are not on current bidders lists ample time to prepare bids, proposals, or quotations; purchasing offices should, when feasible, synopsize proposed procurements no later than ten days before the issuance of solicitations, or the placement of orders against basic ordering agreements if such basic ordering agreement has not previously been synopsized in accordance with 3-410.2(c)(4), as specified in 1-1003.9(b), *provided* that in the case of "Architectural and Engineering Services" and "Research and Development Procurements," every effort shall be made to allow an interval of 14 days. If definite dates for issuance of the solicitation document have not been established, show such dates as being either on or about a given date. If this is not feasible or practicable, purchasing offices shall synopsize proposed procurements not later than the date of issuance of solicitations unless the exceptions cited in 1-1003.1(b) and (c) are applicable.

1-1003.3 *Pre-Invitation / Solicitation Notices.* Where pre-invitation notices (see 2-205.6) or pre-solicitation notices (see 3-106.2) are used, a synopsis of the pre-invitation or pre-solicitation information shall be included in the *Commerce Business Daily*. This information need not be republished in the synopsis when the invitation for bids is issued. However, if the pre-invitation notice contains a set-aside provision which is later canceled (*e.g.*, because of a lack of small business response) then, the procurement shall be synopsized the second time at the time the solicitation is issued.

1-1003.4 *Special Synopsis Situations.*

(a) Research and Development. Advance notices of an agency's interest in a given field of research and development shall be published in the Commerce Business Daily in accordance with 1-1003.9(e) whenever the contracting officer considers that existing bidders mailing lists do not include a sufficient number of concerns to obtain adequate competition. Advance notices shall not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of research and development programs and provide these sources with an opportunity to submit information which will permit evaluation of their research and development capabilities. Potential sources which respond to advance notices shall be added to the appropriate bidders mailing list for the subsequent solicitation. Those sources which do not appear on the agency bidders mailing lists established in accordance with 2-205.1 shall be requested to submit Standard Form 129, Bidder's Mailing List Application. In those situations where responding sources are on established lists they may be requested to submit amended applications in order to reflect their current capabilities. Each specific procurement of research and development shall be publicized in the Commerce Business Daily unless one of the exceptions in 1-1003.1 is applicable.

(b) *Services.*

(1) *Personal and Professional Services.* Notwithstanding the exception in 1-1003.1(c)(vii), contracting officers shall synopsize personal and professional

services when it is feasible and practicable to do so and the best interests of the Government will be served.

(2) *Architect-Engineer Services.* Unless a situation described in 1-1003.1 is applicable, requirements for architect-engineer services shall be publicized as follows:

(i) *Fees Over $10,000.* Each procurement to be made in the United States, its possessions, or Puerto Rico for which the total fee (including phases and options) is expected to exceed $10,000, shall be synopsized in accordance with 1-1003.9(h).

(ii) *Fees Not Exceeding $10,000 or Overseas.* A notice of procurements with fees not expected to exceed $10,000 or to be made outside the United States, its possessions, or Puerto Rico, shall be displayed at the contracting office and need not be publicized in the *Commerce Business Daily.*

For procurements with an estimated total fee of $225,000 and which require notification to Congress in accordance with Section 612 of Public Law 89-568 as amended, no public announcement shall be made until two weeks after Congress has been notified.

(c) Commercial and Industrial Type Activities. When no known sources are available, the requirement shall be synopsized in accordance with 4-1203.

1-1003.5 *Publication of Procurements Not Exceeding $10,000.* When recommended by procurement personnel or the small business specialist, and approved by the contracting officer, proposed procurements not exceeding $10,000 may be publicized in the *Commerce Business Daily.*

1-1003.6 *Synopsis of Subcontract Opportunities.*

(a) *By Contracting Officers.*

(1) To broaden the opportunity in negotiated procurement over $100,000 for subcontracting by small business concerns and others, contracting officers, shall, unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms to whom requests for proposals are to be issued, *provided* that no more than five firms are to be solicited. This procedure will offer opportunity to small business concerns and others interested in subcontracting to make direct contact with prospective prime contractors at an early stage in the procurement. An addition to the regular synopsis prepared in accordance with 1-1003.9 shall be made as set forth in 1-1003.9(g).

(2) Contracting officers shall, for procurements over $100,000 unless not in the Government's interest or significant subcontracting opportunities do not exist, publish in the *Commerce Business Daily* the names and addresses of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising and will therefore be issued invitations for bids in the second step (see 2-503). Such lists should be followed by a statement substantially as follows:

> It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(b) *By Prime Contractors and Subcontractors.* Prime contractors and subcontractors should be encouraged to use the *Commerce Business Daily* to publicize opportunities in the field of subcontracting stemming from their defense business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois, 60680, under the heading "Subcontracting Assistance Wanted" and in the form of the following example.

> XYZ CO. ATTN JOHN Z. SMITH, TELE. NO. 123-456-1111, 102 FIRST AVE., CHICAGO, ILL., 60607, seeks Subcontractor on items to be used in connection with Contract No........ awarded ....(*date*).
> COILS, INDUCTION, DWG. NO. 10-742..............................10,000 ea. (name, description, and quantity of other items or services may be included as long as contract assistance is desired under the same contract number)—if interested, make inquiry before ....(*date*) to above contractor.

1-1003.7 *Information Regarding Specifications, Plans, and Drawings.*

(a) Where distribution of applicable specifications, plans, or drawings with the solicitation is impracticable, the synopsis shall contain notice of this fact and of the locations at which the specifications, plans, or drawings may be examined or obtained. (See 1-1203.)

(b) Where the specifications, plans, and drawings available do not fully provide manufacturing or construction details necessary to describe a requirement, the synopsis shall contain notice of this fact.

(c) Notices of the situation in (a) and (b) above shall be prepared in accordance with 1-1003.9(f).

1-1003.8 *Responsibility of Small Business Specialists.* Small business specialists in each purchasing office are responsible for screening all proposed procurements and for recommending action to be taken with respect to publicizing such procurements in accordance with the requirements of this paragraph 1-1003. In those offices where no small business specialist is assigned, the contracting officer or other designated representative shall accomplish the foregoing.

1-1003.9 *Preparation and Transmittal.*

(a) Each purchasing office shall transmit a synopsis of proposed procurements. Synopses shall be:

(i) issued in a timely manner in accordance with 1-1003.2;
(ii) forwarded daily via first class mail; and
(iii) addressed to:

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, Illinois 60680

(b) Each synopsis shall be prepared as described below:

(1) *Description of Procurements.* Prepare the text of synopses in the sequential format described below or one that closely parallels it. Use conventional typing with both upper and lower case letters and standard punctuation symbols. The description shall be clear, concise, and in such detail that it will be understood by potentially interested parties.

(2) *Spacing.* Double spaced lines will be used in the text. Each procurement shall be described in a separate paragraph.

(3) *Letter Number*. The first line of the text will state the number of the synopsis being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers for each year.

(4) *Contracting Office and Address*. Type the name and address of the contracting office. The address shall include an attention phrase directed to an official by name or title and telephone number. Then drop down several lines before proceeding with the code and description.

(5) *Format*. Start at the left and type the name and address of the procuring agency; skip several lines and again start on the left giving the FSC class or service category (if more than one classification is applicable to the procurement action, enter the FSC for the largest dollar volume procurement), two hyphens, name of the item or service; description (which shall include when known and applicable, the NSN, specification(s), manufacturer, manufacturer's number and/or other pertinent information, such as the availability of plans, specifications and drawings); quantity, unit, and destination information (if of significant import); solicitation number; bid opening; and reference to numbered notes (if any apply) and buyer's name as desired.

(6) New "Number notes" may be added to the list when a request is made by two or more activities or when the request for the note emanates from a Military Department or Agency Headquarters.

(c) In addition to the foregoing, where the proposed procurement is to be effected in accordance with a small business set-aside (see 1–706) or labor surplus area set-aside (see 1–804), the synopsis shall (i) where there is a 100 percent small business set-aside, state that "*The proposed procurement(s) LISTED HEREIN IS (ARE) under 100 percent small business set-aside*," *or (ii) where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of .... is being reserved for .... (insert 'small business' or 'labor surplus area' as appropriate) under a partial determination.*"

NOTE: To avoid confusion, separate letters should be sent covering proposed procurements which are under 100% small business set-aside so that they will be placed in the Department of Commerce NOTICE TO SMALL FIRM Section.

(d) Each week, the first issue of the *Commerce Business Daily* will include a current listing of all the Numbered Notes. These "*Notes*" contain information that is repetitive in content as it is used by two or more procurement offices to describe the form or method to be used in responding to a proposed procurement, the qualifying factors a prospective bidder must have to be considered for an award, or the availability of plans, specifications or other information requisite to the bidding process. When one or more of these "*notes*" includes the verbiage applicable to a provision of a synopsis, procurement offices are encouraged to incorporate by reference the "Note(s)" content into the synopsis. This is done by adding at the end of a synopsis the sentence: "*See note(s)* ...."

(e) So that potential sources may learn of research and development programs which are being considered, notices of the Government's potential interest in specific Research and Development tasks shall be published in the *Commerce Business Daily*. Each notice seeking sources will be headed "Research and Development Sources Sought" and will cite the appropriate Notes to permit evaluation of respondees capabilities and contain sufficient identifying information for respondees to request particulars on the considered task. Only those firms whose capabilities are determined to be adequate will be solicited at the time of procurement and the subsequent solicitation will not generally be re-synopsized.

(f) Certain procurements involve demands on the contractor which may make it virtually impossible for concerns not having special capabilities or qualifications to compete realistically for the contract. So as to alert such concerns to the need for special capabilities or qualifications and thus permit them to avoid improvident expenditures for bid preparation and the like, procurements for which (i) it is impracticable to distribute plans, drawings or specifications, (ii) adequate plans, drawings or specifications to describe requirements are not available, (iii) security clearance is required, or (iv) other circumstances exist which should be brought to the attention of prospective sources for consideration in order to clearly indicate those qualifying factors affecting the procurement, should be so identified in the synopsis. Appropriate notations for inclusion in the synopsis, such as set forth below, should be devised to meet the needs of specific situations.

(1) AVAILABILITY OF SPECIFICATIONS, PLANS OR DRAWINGS

It will be impracticable to distribute the applicable

....

(*Insert "specifications," "plans," "drawings" or other appropriate words*)
with the solicitation. This data may be examined or obtained at
....(*Be specific*).

(2) COMPLETE DATA NOT AVAILABLE

Available specifications, plans, or drawings, relating to the procurement described below do not fully provide all necessary manufacturing and construction details.

(3) SECURITY REQUIREMENTS

Security clearance will be required of all bidders or offerors (or of the successful bidder or offeror).

(4) AVAILABILITY OF BACKGROUND RESEARCH REPORT

This procurement of basic research is a continuation of an effort conducted for the past ....(*insert period*).
A research report containing findings to date is not available to the Government.

(5) PRODUCTION REQUIREMENTS

The production of the supplies listed requires a substantial initial investment or an extended period of preparation for manufacture.

(6) STANDARDIZATION REQUIREMENTS

This procurement is for technical equipment. A determination has been made in accordance with 10 U.S.C. 2304(a)(13) that standardization and interchangeability of parts are necessary in the public interest. Therefore, to achieve standardization, it is proposed that Requests for Proposals need be issued only to the following firms:

....(*Name of firm*)
....(*Address*)

(g) When the contracting officer determines in accordance with 1-1003.6(a) that the names of firms to whom requests for proposals have been issued should be included in the synopsis, such synopsis shall contain substantially the following statement:

> Requests for Proposals have been issued to the following firms:
> (*Name of firm*)..
> (*Address*)..
>
> It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

(h)(1) Each notice publicizing procurement of architect-engineer services shall be headed "*R. Architect-Engineer Services.*" The project shall be listed with a brief statement concerning the location, scope of service required, the significant evaluation criteria (see 18-402.2(b)) and the relative order of importance the Government attaches thereto, the estimated construction cost range (see 18-109), the construction cost limitation (see 18-110), type of contract proposed, the estimated start and completion dates, and the date by which responses to the notice must be received, including submission of Standard Form 255 if required. Appropriate statements shall be made concerning any specialized qualifications, security classifications, and limitations on eligibility for consideration. Qualifications or performance data required from architect-engineer firms shall be described. The foregoing data shall be followed by the statement "*Firms desiring consideration shall submit appropriate data as described in Numbered Note 62. This is not a request for a proposal.*" The name of the responsible procurement office should follow together with the complete address and telephone number. The numbered note will appear in one issue each week of the *Commerce Business Daily* as follows:

> 62. Architect-engineer firms which meet the requirements described in this announcement are invited to submit: (1) a Standard Form 254, Architect-Engineer and Related Services Questionnaire; (2) a Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, when requested; and (3) any requested supplemental data to the procurement office shown. Firms having a current Standard Form 251 or 254 on file with the procurement office are not required to resubmit this form (*Effective October 30, 1976, the use of the SF 251 will be discontinued*). Firms responding to this announcement before the closing date will be considered for selection, subject to any limitations indicated with respect to size and geographic location of firm, specialized technical expertise or other requirements as listed. Following an initial evaluation of the qualification and performance data submitted, three or more firms considered to be the most highly qualified to provide the services required will be chosen for interview.
>
> The Department of Defense policy for selection of architect-engineer firms is not based upon competitive bidding procedures, but rather upon the professional qualifications necessary for the satisfactory performance of the professional services required, subject to the following additional considerations: (1) specialized experience of the firm in the type of work required; (2) capacity of the firm to accomplish the work in the required time; (3) past experience, if any, of the firm

> with respect to performance on Department of Defense contracts; (4) location of the firm in the general geographical area of the project, provided that there is an appropriate number of qualified firms therein for consideration; and (5) volume of work previously awarded to the firm by the Department of Defense, with the object of effecting an equitable distribution of contracts among qualified architect-engineer firms including minority-owned firms and firms that have not had prior Department of Defense contracts. Firms desiring to register for consideration for future projects administered by the procurement office (subject to specific requirements for individual projects) are encouraged to submit annually a statement of qualifications and performance data, utilizing Standard Form 254, Architect-Engineer and Related Services Questionnaire.

(2) Note 62 is a *Commerce Business Daily* standard "numbered note" which applies to all DoD notices publicizing procurement of architect-engineer services. When the notice is used in accordance with 1-1003.4(b)(2)(ii) above, the substance of the numbered note shall be included.

1-1004 Release of Procurement Information.

1-1004.1 *General.*

(a) A high level of business security must be maintained in order to preserve the integrity of the procurement process. Occasionally, it is necessary to contact potential contractors and others outside the Department of Defense to obtain information regarding wage rates, material costs, and the like, in order to prepare Government estimates in connection with proposed procurements; however, these estimates and other details regarding such proposed procurements shall not be publicized nor discussed with prospective contractors.

(b) Maximum information may be made available to the public except (i) advance information on proposed plans regarding procurements, which information would provide undue or discriminatory advantage to private or personal interests; (ii) information which is received in confidence; (iii) information which otherwise requires protection under 1-329.3(c); or (iv) information as to referrals (for technical review, contracting authority, or other reasons) or recommendations made with respect thereto in connection with any given procurement. This policy applies to all Government personnel who participate directly or indirectly in any stage of the procurement cycle. (See 2-211, 3-507 and 3-508.) Information submitted by the bidder or offeror in confidence, and information which might jeopardize, the position of the Government or any prospective contractor shall not be released, except as provided in 1-1004.3 and 3-508. (See 1-705.3 as to information to be released to the SBA, and 1-1007 for procedures for publicizing long-range procurement estimates.)

1-1004.2 *General Public*. Requests from the general public, including suppliers, for specific information will be processed in accordance with 1-329; but see Appendix L, paragraph V. D.

1-1004.3 *Members of Congress.*

(a) *Individual Requests*. In addition to having access to that information available to members of the public, Members of Congress upon their request, shall be given detailed information regarding any particular Department of Defense procurement. The information given shall be responsive to the Congressional request; however, where responsiveness would result in disclosure of classified matter, business confidential information, or information which would be prejudicial to competitive procurement, the proposed reply, with full documentation, shall be referred to the Secretary of the Department concerned, and the appropriate legislative liaison office shall be informed. When a proposed reply is to be so referred to a Secretary, an interim reply shall be made to the congressional request indicating the action being taken.

(b) *Inclusion on Bidders Mailing Lists.* Any member of any Committee or Subcommittee of the Congress which is interested in procurement matters shall, upon request of the Committee or Subcommittee Chairman, be placed on applicable bidders mailing lists to receive automatic distribution of bid and proposal information in the specified area of interest.

1-1005 Publicizing Award Information.

1-1005.1 *Synopsis of Contract Awards.*

(a) *General.* With the exception of awards to SBA using the authority of section 8(a) of the Small Business Act, and awards for perishable subsistence and brand name items for commissary resale, awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $100,000 in amount, shall be published in the *Commerce Business Daily* "Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards" |

(b) *Preparation and Transmittal.*

(1) Purchasing offices shall prepare and forward single copies of synopses of contract awards daily, using the same format as prescribed in 1-1003.9, to the address below, via first class mail.

U.S. Department of Commerce
Commerce Business Daily
P.O. Box 5999
Chicago, Illinois 60680

(2) The synopsis of contract awards shall contain the following information:

- (i) the name and address of purchasing office;
- (ii) the classification code (4-digit) applicable to the procurement action;
- (iii) a clear and concise description of the supplies or services being procured, including a national stock number or a service stock number when assigned, such description to be followed by the contract number and date and, in parentheses, by the applicable number of the invitation for bids or requests for proposals;
- (iv) the quantity of each item;
- (v) the dollar amount of the award;
- (vi) the name, size status ((S) for small business and (L) for large business), and the full address of the contractor;
- (vii) for FOB destination procurement when total shipments from a point of origin to a point of destination will exceed 200,000 pounds and destinations are firm—
  - (A) origin point of shipment when different from (vi) above;
  - (B) CONUS destination of shipment (see 1-1003.9(b)(6)); and
  - (C) scheduled delivery period (beginning and ending dates); and

(viii) when requested by the prime contractor, a statement of the industries, crafts, processes or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

1-1005.2 *Announcement of Awards.*

(a) *Public Announcement*. Information on proposed contractual actions over $3 million shall be submitted in writing in accordance with Departmental/Agency procedures. Report Control Symbol DD-LA(AR) 1279 applies. Departments will submit reports to the Office of the Assistant Secretary of Defense (Public Affairs) by the close of business the day before contract award is proposed, so that this data may be announced to the press at 1600 hours Washington, D.C. time on the day of award. Contracts excluded from this reporting requirement include (i) those placed with the Small Business Administration under Section 8(a) of the Small Business Act, and (ii) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions. Awards or release of information on proposed contracts shall not be made prior to the public release time of 1600 hours Washington, D.C. time.

(b) *Congressional Notification*. In accordance with Departmental procedures, Departments shall notify the appropriate Members of Congress (Senators and Representatives in whose state and district the proposed contractor is located and, if different, in whose state and district the work is to be performed) of contract awards of over $3 million concurrent with the public announcement described in (a) above.

1-1005.3 *Local Announcements of Awards Over $10,000*. Contract awards may also be the subject of local press release or other public announcements. When such press releases or public announcements are made, for procurements of $10,000 or more, they shall include the following information:

(i) for awards after formal advertising, state that the contract was awarded after competition by formal advertising and include the number of bids solicited and the number received, and state in general terms the basis for selection, *e.g.*, the lowest responsible bidder;

(ii) for awards after procurement by negotiation, include the information contained in the notice prescribed by 3-508.3 and where the award was made after competitive negotiation (either price or design competition), include a statement to this effect and state in general terms the basis for selection.

1-1006 Reserved.

1-1007 Public Release of Long-Range Procurement Estimates.

1-1007.1 *General.* To assist industry in planning its efforts, and to locate additional sources, it may be desirable to announce to the public long-range procurement estimates on certain items, groups or types of items, materials, or research and development projects and tasks procured by the Department of Defense. Procurement estimates with respect to proposed purchases may be provided to industry as far in advance as possible under the conditions contained in 1-1007.3, 1-1007.4 and 1-1007.5.

1-1007.2 *Application*. Public release of long-range procurement estimates may be made by a Head of a Procuring Activity or his designee if he determines that the:

(i) information to be released will assist industry in its planning and facilitate meeting the procurement requirements;
(ii) announcement will not adversely affect procurement by encouraging undesirable practices, such as attempts to corner the market or hoard industrial materials; and
(iii) information to be released will not indicate the existing or potential mobilization of the industry as a whole.

1-1007.3 *Conditions*.

(i) The Head of a Procuring Activity or his designee shall be responsible for the determination of the need for, and the preparation of, the proposed announcement.

(ii) The information shall be:
  (A) released as nearly simultaneously as possible, and
  (B) consistent with the needs of the individual case, publicized as widely as practicable by any or all of the following means: dissemination to prospective bidders on the purchasing office's bidders lists, posting in public places, and other appropriate means.

BEST DOCUMENT AVAILABLE

(iii) Each release shall state that the estimate is based on the best information available at the time of publication, the information is subject to modification, is in no way binding on the Government, and that more specific information relating to any individual item or class of items will not be furnished until the proposed procurement is synopsized in the *Commerce Business Daily* (see 1-1003), or the solicitation issued.

(iv) Each release shall contain the name and address of the purchasing office which will process the procurement.

(v) Modifications to the original release shall be publicized as expeditiously as possible, in the same manner as the original.

(vi) Each proposed release shall be coordinated with small business, public information, and public relations personnel, as appropriate.

(vii) Each release shall contain, if applicable, a statement to the effect that small business or labor surplus area set-asides may be involved in some of the procurements, and that the determination of the applicability of these factors can be made only at the time that procurement action is initiated.

(viii) Each release shall contain the name or description of the item, and the estimated quantity to be purchased by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last purchased, the unit price, and the name of the last supplier.

1-1007.4 *Commerce Business Daily Announcements.*

(a) *General.* In addition to the publication of estimates as provided in 1-1007.3, further publication, where consistent with the needs of the individual case, shall be accomplished by announcements in the *Commerce Business Daily* reflecting the fact that long-range procurement estimates have been published and are obtainable, on request, from the issuing organization.

(b) *Preparation and Transmittal.* Activities publishing long-range procurement estimates shall, in accordance with (a) above, publicize them in the *Commerce Business Daily* by forwarding to the address listed in 1-1003.9(a) an announcement reflecting the fact that a long-range procurement estimate has been published and citing the address of the office from which a copy of the estimate can be obtained. Each announcement should be prepared substantially as the following example.

> The Defense Personnel Support Center has published an estimate of equipment and footwear procurement requirements for ______ and ______ Quarters FY ______. These estimates, *which are subject to revision and are in no way binding on the Government*, may be obtained, by request, from the Defense Personnel Support Center (ATTN: Procurement and Production Directorate), 2800 South 20th Street, Philadelphia, Pennsylvania 19101.

1-1007.5 Classified Information shall be released through existing security channels in accordance with the DOD Industrial Security Regulation (DOD 5220.22R).

Part 11—Qualified Products

1-1101 General.

(a) It is sometimes necessary to test products in advance of any purchase action to determine if a product is available that will meet specification requirements. In such cases, the specification may require qualification of the product. Qualification is the entire process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, and then identified on a list of qualified products. Qualification is performed in advance and independent of any specific purchase action.

(b) A Qualified Products List (QPL) identifies the specification, manufacturer or distributor, item by part or model number or trade name, place of manufacture, and the test report involved. Suppliers whose products have successfully passed qualification and who furnish evidence thereof are eligible for award although not yet included on the QPL.

(c) Chapter IV of the Defense Standardization Manual 4120.3-M (formerly M200) is the basic instruction concerning qualified products and qualification procedures. Specifications which require a QPL are identified in the Department of Defense Index of Specifications and Standards. Copies of the Index and the Manual 4120.3-M may be purchased by the public from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(d) Qualifying country sources (see 6-001) are not to be precluded from the opportunity to have their supplies listed on the Qualified Products List under 1-1105.

1-1102 Responsibility for Qualification. A Federal or Military specification is the only medium for establishing a requirement for qualification. The preparing activity identified in the specification is responsible for qualification.

1-1103 Justification for Inclusion of Qualification Requirements. Subject to approval by: in the case of the Army, the Army Materiel Command (AMCRD-EM); in the Navy, the Chief of Naval Material; in the Air Force, Directorate of Engineering and Maintenance (AF/LGYE), Departmental Standardization Office, USAF; in the Defense Logistics Agency, the Executive Director for Purchasing; in the National Security Agency, the Director of Procurement; in the Defense Communications Agency, the Director; in the Defense Nuclear Agency, Deputy Director, Operations and Administration; and in the Defense Mapping Agency, Staff Director of Logistics; a qualification requirement may be included in a specification when one or more of the following conditions exist.

(i) The time required to conduct one or more of the examinations and tests to determine compliance with all the technical requirements of the specification will exceed 30 days (720 hours). (Use of this justification should advance product acceptance by at least 30 days (720 hours).)

(ii) Quality conformance inspection would require special equipment not commonly available.

(iii) It covers life survival or emergency life saving equipment. (See 1-1902(b)(ii).)

1-1104 Availability of Lists. Qualified products lists are intended for the use of the Government and its contractors, subcontractors, prospective bidders, and suppliers. Lists may be obtained by prospective bidders or suppliers who require these lists in furnishing supplies or services to the Government or its contractors. Lists are also available to the public upon request. When a person is provided with, or given access to, a qualified products list he should be advised as follows:

(i) the list has been prepared for use by or for the Government in the acquisition of products covered by the specification and such listing of a product is not intended to and does not connote indorsement of the product by the Department of Defense;
(ii) all products listed have been qualified under the requirements for the product as specified in the latest effective issue of the applicable specification;
(iii) the list may be revised or amended as necessary, and subject to change without notice;
(iv) the listing of a product does not release the supplier from compliance with the specification requirements; and
(v) use of the information for advertising or publicity purposes is permitted, *provided* that such publicity or advertising does not state or imply that the product is the only product of that type so qualified or that the Department of Defense in any way recommends or endorses the manufacturer's product.

1-1105 Opportunity for Qualification. Upon determination that a product is to be covered by a qualified products list, manufacturers shall be urged to submit their products for qualification and where possible shall be given sufficient time to arrange for qualification testing prior to issuance of the initial invitation for bids or request for proposals for the item as a qualified product. Appropriate notice of such determination shall be furnished to the U.S. Department of Commerce, *Commerce Business Daily*, P.O. Box 5999, Chicago, Illinois 60680, requesting publication in the daily "Synopsis of U.S. Government Proposed Procurement, Sales and Contracts Award". The publicity given to the requirement for qualification testing shall include the following:
(i) an intention to establish a qualified products list for a product,
(ii) the specification number and nomenclature of the product, and the name and address of the office to which the request for qualification should be submitted; and
(iii) notice that in making future awards consideration shall be given only to such products as have been accepted for inclusion in a qualified products list.

Lists shall always be kept open for inclusion of products from additional suppliers, including suppliers from qualifying country sources (see 6-001).

1-1106 Clarification of Qualification Requirements. When there is any question concerning qualification requirements in a specification, the activity that prepared the specification will furnish clarification when requested by the contracting activity.

1-1107 Acquisition of Qualified Products.

1-1107.1 *General.*

(a) Whenever qualified products are to be obtained by the Government as end items, only bids or proposals offering products which are qualified for listing on the applicable Qualified Products List at the time set for opening of bids or award of negotiated contracts shall be considered in making awards.

(b) Whenever a qualified product is to be obtained by a prime contractor as a component of an end item, the prime contractor shall be required to furnish a component which has been tested and qualified for inclusion in the applicable Qualified Products List by the time of award of the subcontract. Delay resulting from the prime contractor awaiting qualification approval by the Government of a component shall not constitute excusable delay when a previously qualified component could have been procured in time to meet the end item delivery schedule.

(c) Procurements involving qualified products shall be governed by (1) through (4) below.

(1) Synopses of proposed procurements shall be published by purchasing activities, in accordance with 1-1003, promptly upon receipt of purchase requests.

(2) The maximum time consistent with delivery requirements shall be allowed between issuance of the solicitation and the opening of bids or the award of a negotiated contract. As a minimum, however, contracting officers shall allow 30 calendar days between the dates of issuance and opening (award, in the case of negotiated contracts), *provided* that periods of less than 30 days may be set in cases of urgency when the justification for a shorter period is set forth in writing and made a part of the procurement file. In appropriate cases, advance notice of procurement involving qualified products may be given suppliers through the use of preinvitation notices. Such notices shall identify the specification requiring qualification.

(3) In procuring qualified products by formal advertising, invitations for bids will be distributed to suppliers in the same manner as if a qualified product were not involved, and will not be restricted to suppliers whose products have been qualified.

(4) Contracting officers shall forward requests from suppliers concerning qualification of products to the specification preparing activity.

1-1107.2 *Contract Provisions.*

(a) When qualified end products are to be procured, insert the provision in 7-2003.6.

(b) When qualified products are to be procured as components of end items, insert the clause in 7-2003.7.

1-1107.3 *Effect of Debarment or Suspension.* Notwithstanding any other provision of this Part, the inclusion of a product on the qualified products lists may be denied, and the qualification of a listed product may be withdrawn, by the Department concerned, without notification to the manufacturer, if the name of the manufacturer appears on the lists of debarred or ineligible bidders which are maintained pursuant to Section I, Part 6. With reference to Type B listings, the provisions of this paragraph shall be applicable only if the qualified product is in the category prescribed by the Secretary of Labor (see 1-603).

1-1108 Waiver of Qualification Requirement. When procuring a product under a specification which includes qualification requirements either for the end item or for components of the end item, such qualification requirements can be waived only by the activity that prepared the specification. In appropriate cases, when requested by the contracting officer, the preparing activity may waive qualification requirements. A notice, issued by the preparing activity, directing a waiver of the qualification requirement, constitutes adequate authorization for waiver of product qualification requirements. Where waivers have been granted, solicitations shall specifically indicate that the qualification requirement is inapplicable. Such information shall also be included in any Synopsis of the procurement.

1-1109 Inadequate Competition.

(a) *Pre-Solicitation.* In connection with procurement of a qualified product as an end item, the contracting officer shall review the applicable Qualified Products List prior to solicitation to ascertain whether the number of sources is adequate for competition. If, in the opinion of the contracting officer, the number of sources is inadequate, action shall be taken as prescribed below unless he already has the necessary information.

(1) The contracting officer shall request the activity that prepared the specification to provide information concerning the status of tests on additional products, including the anticipated dates when such tests will be completed so that opening of bids or submission of proposals may be so scheduled as to allow completion of the tests.

(2) If no tests are being conducted or contemplated, the contracting officer shall further request the preparing activity to advise whether a means of quality assurance other than qualification approval may be substituted in the procurement.

(b) *Post-Solicitation.* The contracting officer shall advise the specification preparing activity of the name and address of any concern which requested copies of the solicitation but was not included on the Qualified Products List. The specification preparing activity may then attempt to interest such concerns in becoming qualified.

1-1110 Reporting Nonconformance With Specification Requirements. If a supplier on the qualified products list repeatedly submits products not meeting specification requirements for inspection, resubmits products previously rejected without correcting the defects, or is otherwise unsatisfactory in the performance of contracts, he shall be reported to the activity that prepared the specification for a determination as to whether the supplier's product shall be removed from the list.

1-1111 Misuse of Qualified Products List Information. Misuse of qualified products list information, such as for advertising or publicity purposes contrary to that permitted in 1-1104(v), shall be reported promptly to the preparing activity.

Part 12—Specifications, Plans, and Drawings

1-1201 General.

(a) Plans, drawings, specifications, standards, or purchase descriptions for acquisitions shall state only the actual minimum needs of the Government and describe the supplies and services in a manner which will encourage maximum competition and eliminate, insofar as possible, any restrictive features which might limit acceptable offers to one supplier's product, or the products of a relatively few suppliers. Items to be acquired shall be described by reference to the applicable specifications or by a description containing the necessary requirements. Referenced specifications and standards shall be tailored in their application. Tailoring consists of the exclusion of those sections, paragraphs or sentences of individual specifications and standards not required for a specific procurement so that each document applied states only the minimum requirements of the Government. Such tailoring need not be made a part of the basic specification or standard but will vary with each application dependent upon the nature of the procurement. When specifications are cited, they, and all amendments or revisions thereof applicable to the procurement, shall be identified, including the respective approval dates of the applicable issue, revision, amendment, or notices. When specifications, standards, or other documents are referenced in cited specifications, their effective issue or revision shall be that listed in the Department of Defense Index of Specifications and Standards (DoDISS) and supplements thereto, unless (i) specific issues are set forth therefor in the cited Specifications or (ii) different issues than those specified in the cited specifications are set forth in the solicitation. The date of the applicable DoDISS and supplements thereto shall be set forth in the solicitation. Copies of all specifications, standards, and other documents citing issue dates other than those shown for the documents by the specified DoDISS must be furnished with the solicitations as prescribed by 1-1203. The requirement to identify the DoDISS, specifications, standards, and other documents by issue refers to the specific calendar date of approval printed on the document or the latest applicable amendment or revision notice. Revision letters of drawings may be used in lieu of revision dates when the letters provide the same degree of identification as the dates. General identification such as "the issue in effect on the date of the solicitation," or similar language, shall not be used. Drawings and data furnished with solicitations shall be clear and legible.

(b) Many specifications cover several grades or types, and provide for several options in methods of inspection, etc. When such specifications are used, the solicitation shall state specifically the grade, type, or method of inspection, etc., on which bids or offers are to be based.

1-1202 Mandatory Specifications and Standards.

(a) Except as provided in (b) below, the following specifications and standards are mandatory for use by the Department of Defense in the acquisition of supplies and services covered by such specifications and standards:

(i) Federal specifications and standards, unless determined by the Department of Defense to be inapplicable for its use;

(ii) Military specifications and standards approved by the Department of Defense for its use; and

(iii) Industry documents adopted by the Department of Defense as listed in the Department of Defense Index of Specifications and Standards.

(b) Federal and Military specifications and standards need not be used for the following unless required by Departmental instructions:

(i) purchase of items for authorized resale except military clothing;

(ii) purchases for construction when nationally-recognized industry and technical source specifications and standards are available (see 18-107); or

(iii) purchase of items in an amount not to exceed $10,000 (multiple small purchases of less than $10,000 of the same item shall not be made for the purpose of avoiding the use of Federal or Military specifications).

(c) Unless required by Departmental instructions, Federal and Military specifications and standards need not be prepared for use in the below listed contracting actions; however, existing Federal and Military specifications and standards, and adopted industry documents to the extent that they are applicable to the item or service required, shall be used for:

(i) purchase incident to research and development;

(ii) purchase of items for test or evaluation;

(iii) purchase of laboratory test equipment for use by Government laboratories;

(iv) purchase of one-time procurement items; or

(v) purchase of items—

(A) for which it is impracticable or uneconomical to prepare a specification or standard (repetitive use of a purchase description containing the essential characteristics of a specification, except for acquisition of unique components or replacement parts, will be construed as evidence of improper use of this exception); or

(B) when the purchase involves an item which is the product of private development and the provisions of 1-304 are complied with.

(d) If it is determined, in accordance with the procedures established under the Defense Standardization Program by the Under Secretary of Defense for Research and Engineering, that the specifications and standards listed in (a) above do not meet the particular or essential needs of a bureau, service, or command, then (except as provided in (b) and (c) above) applicable amendments, revisions or new specifications or standards (interim Federal or limited coordination Military) shall be immediately prepared and used.

(e) When it is necessary to make interim changes or corrections to specifications or standards to effect an acquisition, the authorizing activity shall take immediate action to advise the specification or standard preparing activity of the changes or corrections and the reasons giving rise thereto.

1-1203 Availability of Specifications, Standards, Plans and Drawings.

1-1203.1 *General.* Each solicitation shall be accompanied with the applicable specifications, standards, plans, drawings, descriptions and any other pertinent documents, or shall state where such documents may be obtained or examined, in accordance with this paragraph. In the case of specifications and drawings available from the purchasing office, the solicitation should identify as precisely as possible the responsible individual's name and title, address and room number, office symbol, and telephone number, for purposes of facilitating and expediting requirements for documents or for examination of such documents.

1-1203.2 *Specifications and Standards Listed in the DODISS and Data Item Description Listed in DoD Directive 5000.19-L, Volume II.*

(a) A Department of Defense Single Stock Point (DODSSP) has been established at the Naval Publications and Forms Center in Philadelphia for unclassified Federal, Military and other specifications and standards (including commercial) listed in the Department of Defense Index of Specifications and Standards (DODISS) and data item descriptions listed in the Department of Defense Acquisition Management Systems and Data Requirements Control List (AMSDL) DODD 5000.19-L, Volume II. Except as provided in (b) below, such specifications, standards, and descriptions normally will not be furnished with the solicitation; but the solicitation shall contain the provision in 7-2003.8.

(b) Specifications and Standards listed in the DODISS (excluding commercial) and Data Items listed in the AMSDL may be furnished with the solicitation when:

(i) the nature and complexity of the item are such that furnishing with the solicitation is necessary to enable prospective contractors to make a competent initial evaluation of the solicitation;

(ii) in the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the specifications, standards and descriptions from the DODSSP in time to respond to the solicitation; *e.g.*, urgency of the procurement, isolated geographical area, or other cogent reason; or

(iii) a prospective contractor who has not previously bid on the item requests a copy of the solicitation.

(c) Purchasing activities may obtain copies of the DODISS and the AMSDL, as well as all unclassified specifications and standards (including commercial) listed in the DODISS, and data item descriptions listed in the AMSDL by sending DD Form 1425 to the DODSSP.

1-1203.3 *Specifications and Standards Not Listed in DODISS, Data Item Descriptions Not Listed in DoD Directive 5000.19-L, Volume II, and Plans, Drawings, and Other Pertinent Documents.* Specifications and standards not listed in the DODISS, and plans, drawings, and other pertinent documents (including new or revised Federal or Military specifications and standards not yet listed in DODISS) and data item descriptions not listed in DoD Directive 5000.19-L, Volume II, normally shall be furnished with the solicitation. When this is not feasible because of the bulk of the documents, the limited number of copies available, or for some other good reason, the solicitation shall include a provision substantially similar to that contained in 7-2003.9(a) or (b) as appropriate.

1-1204 Packaging and Marking Policies.

(a) All Department of Defense supplies, materials, and equipment shall be afforded the degree of packaging (preservation and packing) required to prevent deterioration and damages due to the hazards of shipment, handling and storage.

BEST DOCUMENT AVAILABLE

(b) Appropriate packaging and marking requirements shall be included in procurement documents.

(1) When a commodity specification is used for procurement, the required military packaging level or commercial packaging reference contained in that specification shall also be stated in the procurement document.

(2) When a commodity specification is not used, the procurement document shall include or reference either a process specification or standard; a detailed packaging requirement for each applicable military packaging level; or a requirement for commercial packaging.

(3) The exception in 1–1202(b)(iii) to the use of mandatory specifications extends to packaging specifications.

(c) *Marking requirements.*

(1) MIL-STD–129, "*Marking for Shipment and Storage*," together with any appropriate additional marking requirements, shall be specified in procurement documents for the marking of military packaged items.

(2) MIL.STD.NO. 1188, "*Commercial Packaging of Supplies and Equipment*," together with any appropriate additional marking requirements, shall be specified in procurement documents for the marking of commercially packaged items.

(3) For items having shelf-life limitations, marking requirements shall include:

(i) dating or other maximum allowable age or shelf-life limitations as specified by the contractor or manufacturer; and

(ii) any temperature, humidity, or other required storage conditions.

(d) Item and destination information furnished by the requiring activity shall be used by the contracting officer in determining appropriate military packaging levels or commercial packaging references and marking requirements. Maximum practicable use shall be made of packaging specialists in the development and establishment of individual procurement packaging and marking requirements and the evaluation of contractors' estimates or charges for such services.

(e) Reports and recommendations furnished by the contract administration office on DD Form 2025, "*Packaging Change Recommendation/Approval*" shall be acted upon promptly by the procuring contracting officer as provided for by the form.

1–1205 Offshore Procurement. Contracting officers accomplishing offshore procurement are authorized to use, where necessary, such specifications, standards, and purchase descriptions of foreign governments, or groups thereof, foreign trade associations, or purchase descriptions developed locally which will be readily understood by foreign vendors, *provided*, adequate measures are taken to insure satisfactory and acceptable products, including standard and interchangeable items, where required.

1–1206 Purchase Descriptions.

1–1206.1 *General.*

(a) A purchase description may be used in lieu of a specification when authorized by 1–1202(b) or (c) and, subject to the restriction on repetitive use in 1–1202(c)(v), where no applicable specification exists. An adequate purchase description is an aid to competition and, in the absence of competition, aids in determining the reasonableness of price. A purchase description should set forth the essential physical and functional characteristics of the materials or services required. As many of the following characteristics as are necessary to express the minimum requirements of the Government should be utilized in preparing purchase descriptions:

(i) common nomenclature;
(ii) kind of material, *i.e.*, type, grade, alternatives, etc.;
(iii) electrical data, if any;
(iv) dimensions, size or capacity;
(v) principles of operation;
(vi) restrictive environmental conditions;
(vii) intended use, including—
  (A) location within an assembly, and
  (B) essential operating conditions;
(viii) equipment with which the item is to be used;
(ix) other pertinent information that further describes the item, material or service required.

Purchase descriptions shall not be written so as to specify a product, or a particular feature of a product, peculiar to one manufacturer and thereby preclude consideration of a product manufactured by another company, unless it is determined that the particular feature is essential to the Government's requirements, and that similar products of other companies lacking the particular feature would not meet the minimum requirements for the item. Generally, the minimum acceptable purchase description is the identification of a requirement by use of brand name followed by the words "or equal." This technique should be used only when an adequate specification or more detailed description cannot feasibly be made available by means other than reverse engineering (see 1–304) in time for the procurement under consideration. Purchase descriptions of services to be procured should outline to the greatest degree practicable the specific services the contractor is expected to perform.

(b) The words "or equal" should not be added when it has been determined in accordance with (a) above that only a particular product meets the essential requirements of the Government, as, for example, (i) where the required supplies can be obtained only from one source; (ii) procurements negotiated under 3–207 for specified medicines or medical supplies where it has been determined that only a particular brand name product will meet the essential requirements of the Government; or (iii) procurements negotiated under 3–208 for supplies for resale where it has been determined by a selling activity that only a particular brand name product will meet the desires or preferences of its patrons.

1–1206.2 *Brand Name or Equal Purchase Descriptions.*

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only when authorized by 1–1202(b) or (c) and in accordance with 1–1206.3 and 1–1206.4. The term "*brand name product*" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced. If modifications to manufacturers' standard products to meet the purchase description requirements are anticipated, a minimum of 30 calendar days shall be allowed between issuance of the solicitation and opening of bids or receipts of proposals, *provided* that periods of less than 30 days may be set in cases of urgency.

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government. For example, where interchangeability of parts is required, such requirement should be specified. Purchase descriptions shall contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(i) complete common generic identification of the item required;
(ii) applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears; and
(iii) name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor. The contracting officer will insure that a copy of any catalogs referenced (except parts catalogs) is available on request for review by bidders at the purchasing office.

1-1206.3 *Invitation for Bids — Brand Name or Equal Purchase Descriptions.*

(a) Except as provided in (c) below, when a "brand name or equal" purchase description is included in an invitation for bids, the following shall be inserted after each item so described in the invitation, for completion by the bidder:

Bidding on:
Manufacturer's Name .... Brand .... No. ....

(b) In addition, the clause in 7-2003.10 shall be included.

(c)(1) When component parts of an end item are described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (b) above to such component parts would be impracticable, the requirements of (a) above shall not apply with respect to such component parts. In such cases, if the clause is included in the Invitation for Bids for other reasons, a statement substantially as follows also shall be included:

The clause entitled "Brand Name or Equal" does not apply to the following component parts:
(List the component parts as to which the clause does not apply.)

(2) In the alternative, if the contracting officer determines that the clause in (b) above should apply to only certain such component parts, the requirements of (a) above shall apply to such component parts and a statement substantially as follows also shall be included:

> The clause entitled "Brand Name or Equal" applies to the following component parts: (List the component parts to which the clause applies.)

(d) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

1-1206.4 *Bid Evaluation and Award — Brand Name or Equal Purchase Descriptions.*

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in 7-2003.10 that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(b) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances where (i) the description of the end item contains "brand name or equal" purchase descriptions of component parts or of accessories related to the end item and (ii) the clause in 7-2003.10 was applicable to such component parts or accessories (see 1-1206.3(c)).

1-1206.5 *Procedure for Negotiated Procurements.*

(a) The policies and procedures prescribed in 1-1206.2 through 1-1206.4 for formally advertised procurements shall be generally applicable to negotiated procurements.

(b) The clause in 7-2003.10 may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

1-1207 Alternate Articles or Qualities. Invitations for bids and requests for proposals may provide for alternate bids or proposals on different articles or qualities of material, *e.g.*, where two or more articles will be equally acceptable to the Government depending upon relative price. However, the alternate articles or qualities must be precisely described to assure that the same degree of competition is obtainable on the alternate bids or offers as is obtained on the basic articles described.

1-1208 Procurement of Used and Reconditioned Material and Former Government Surplus Property.

(a) Generally, all supplies or components thereof, including former Government property, purchased, shall be new (not used or reconditioned, and not of such age or so deteriorated as to impair their usefulness or safety). However, the needs of the Government may sometimes be met, and economies effected, through the purchase of items which are not new. Solicitations shall include the New Material clause in 7-104.48, except when the clause would serve no useful purpose. This clause is appropriate for use not only in supply contracts, but also in service contracts which may involve an incidental furnishing of parts, such as contracts for overhaul, maintenance or repair.

(b) In all procurements in which the contracting officer has determined that supplies and components which are used or reconditioned but which fully comply with the specifications and other contract requirements are acceptable, the solicitation shall include provisions clearly indicating the supplies or components which need not be new, and details concerning their acceptability. In determining whether such supplies and components may be purchased, the following criteria shall be considered:

- (i) safety of persons or property;
- (ii) final cost to the Government (including maintenance, inspection, testing, and useful life);
- (iii) performance requirements; and
- (iv) availability and cost of new supplies and components (for example, out-of-production items).

(c) Items previously sold as Government surplus shall not be accepted unless it is determined that the surplus property offered fully meets the applicable specifications and other contract requirements. In addition, care must be exercised to insure that the prices paid for such items are reasonable giving due consideration to overall cost savings to the Government without affecting quality. Where a contract calls for material to be furnished at cost, the allowable charge for any Government surplus property furnished shall be the cost at which the contractor or his affiliate acquired the property.

(d) The solicitation shall include the Government Surplus clause in 7-104.49, except when the clause would serve no useful purpose.

Part 13—Reserved

For Transportation Instructions, See Section XIX.

Part 14—Transportation by Ocean Carriers

1-1401 Definitions. As used in this paragraph:

(i) "*Dry bulk carriers*" are ships for the carriage of shipload lots of homogeneous unmarked cargoes such as grain, coal, cement and lumber.

(ii) "*Dry cargo liners*" are ships used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo can be carried in such ships, including part cargoes of bulk items such as those mentioned above, or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

(iii) "*Tankers*" are ships used for the carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils and molasses.

(iv) "*Government vessel*" means a vessel owned by the United States Government and operated directly by the Government or for the Government by an agent or contractor, including privately owned United States-flag vessels under bareboat charter to the Government.

(v) "*Private United States vessels*" means privately owned United States-flag commercial vessels, including such vessels when under voyage or time charter to the United States Government, and including Government-owned vessels under bareboat charter to private operators.

(vi) "*United States-flag vessels*" when used independently means both Government vessels and private United States vessels; and

(vii) "*Foreign-flag vessel*" means any vessel of foreign registry and includes vessels owned by United States citizens but registered in a nation other than the United States.

1-1402 Preference for United States-flag Vessels. It is the policy of the Department of Defense to encourage and foster the American merchant marine. When transportation of supplies by ocean vessel is required:

(i) private United States vessels shall be employed for the transportation of at least 50 percent of the aggregate gross tonnage per annum of the following categories of supplies:

(A) supplies owned by the Government and in the possession of a Department, or of a contractor, or subcontractor of any tier, of a Military Department;

(B) supplies for the use of the United States which are contracted for and require subsequent delivery to a Department but are not owned by the Government at the time of shipment; and

(C) supplies procured, contracted for or otherwise obtained for nonreimbursable contribution to foreign assistance programs, but which are not owned by the Government at the time of shipment; *provided*, that this requirement shall not extend to the ocean transportation between foreign countries of supplies procured with local currency funds made available, or derived from funds made available, under the Foreign Assistance Act of 1961, as amended.

Provided, that the allocation of gross tonnage will be computed separately for dry bulk carriers, dry cargo liners, and tankers and in such a manner as to assure fair and reasonable participation by geographic areas; and *provided*, that private United States vessels are available at fair and reasonable rates for such vessels;

(ii) only United States-flag vessels will be employed for the transportation of the supplies defined in (i)(A) above when such supplies are for the use of the Departments unless such vessels are not available at fair and reasonable United States-flag rates.

1-1403 Applicability.

(a) For the purposes of this Part, the following geographic areas are established:

(i) *North Atlantic:* Includes Eastern Canada from the United States border to Goose Bay, Labrador; and Narsarssuak, Greenland.

(ii) *U.S. East Coast:* Includes the eastern United States from the Canadian border to (and including) Key West, Florida.

(iii) *U.S. Gulf:* Extends from (but excluding) Key West, Florida, to the Mexican border.

(iv) *Caribbean:* Includes Bermuda; Bahamas; Cuba; Puerto Rico; Haiti; Dominican Republic; Jamaica; Windward and Leeward Islands; Trinidad; the eastern coast of Mexico; the eastern coast of Central America; and the northern coast of South America up to (and including) French Guiana.

(v) *Eastern South America:* Includes the eastern coast of South America from (but excluding) French Guiana to Cape Horn.

(vi) *North Europe:* From the northern boundary of Portugal includes northern Atlantic and Biscay ports of Spain; Bordeaux/Hamburg range; Scandinavian and Baltic Sea ports; England, Wales, Scotland and Ireland; Iceland.

(vii) *Mediterranean:* Includes Azores; Canary Islands; Morocco; Spanish Morocco; Mediterranean ports extending from Gibraltar to Suez Canal; ports on Adriatic and Aegean Sea, Sea of Marmora and Black Sea; and Atlantic ports of Portugal and Spain from Gibraltar to the northern boundary of Portugal.

(viii) *West Africa:* Includes the western coast of Africa from northern boundary of Rio de Oro to southern boundary of Angola and includes the Cape Verde Islands, Ascension Island and St. Helena.

(ix) *South and East Africa:* Includes the southern and eastern coast of Africa and Madagascar from southern boundary of Angola on the west coast and around the south and east coast to Cape Guardafui between the Gulf of Aden and the Indian Ocean.

(x) *South Asia:* Extends from Suez to but excluding New Guinea. Includes the shores of the Red Sea; shore of the Gulf of Aden; the northern shores of the Indian Ocean including extensions such as the Persian Gulf; the East Indies including Borneo, the Celebes, etc., but excluding the Philippines and New Guinea; and the Malay Peninsula excluding Thailand.

(xi) *New Guinea-Australia:* Includes Australia; New Guinea; Tasmania; New Zealand and Melanesia (comprising generally the Admiralty Islands, New Ireland, New Britain, the Solomons, New Hebrides and New Caledonia).

(xii) *East Asia:* Includes the ports of the mainland and islands of East Asia from and including Thailand to and including Japan; includes the Philippines, Formosa, the Ryukyu Islands and the Bonins.

(xiii) *Hawaii-Central Pacific:* Hawaiian Islands; Wake/Marcus; and Oceania and Micronesia (comprising generally Palau, Marianas, Carolines, Gilberts, Fijis, Marquesas, Tuamotu Archipelago, etc., but excluding oceanic island possessions of South American countries).

(xiv) *Alaska and Aleutian Islands:* Includes the western coast of Canada and Alaska (including the Aleutian Islands) south of Cape Prince of Wales.

(xv) *U.S. Northwest:* Includes all Oregon and Washington ports.

(xvi) *U.S. West Coast:* Includes all California.

(xvii) *Western Mexico and Central America:* Includes the western coast of Mexico and the western coast of Central America.

(xviii) *Western South America:* Includes the western coast of South America from (and including) the Republic of Colombia to Cape Horn, and the Pacific Islands possessions of South American countries.

(xix) *Exempt Areas:*

(A) Alaska north of Cape Prince of Wales.

(B) Greenland, except Narsarssuak.

(C) Northern and eastern Canada from Goose Bay, Labrador, to Alaska.

(D) Ports and facilities under security restrictions in otherwise nonexempt areas.

(E) Antarctica.

(b) The procedures set forth below are applicable to all ocean shipments of supplies except:

(i) shipments in vessels assigned to United States Navy fleets other than the Military Sealift Command;

(ii) shipments which originate or terminate in "exempt areas" as established in (a) above;

(iii) shipments which originate and terminate in the same geographic area; *provided*, however, that supplies of the type described in 1-1402(i)(A) above shall be transported in United States-flag vessels to the extent such vessels are available at fair and reasonable United States-flag rates;

(iv) shipments aboard vessels of the Panama Canal Commission; and |

(v) shipments of classified supplies where the classification prohibits the use of non-Government vessels.

1-1404 Procedures.

(a) Except for those supplies obtained for nonreimbursable contributions to foreign assistance programs for which the ocean transportation is to be provided by and at the expense of the recipient government, ocean transportation of supplies owned by the Government and in the possession of either a Department, or a contractor, or subcontractor of any tier, of a Department, will be provided by the Military Sealift Command. Accordingly, any contract which may involve ocean transportation of property owned by the Government and in the possession of the contractor or any of his subcontractors (including any contract under which title to property may pass to the Government prior to shipment) shall include a clause substantially as in 7-104.19(a). Upon receipt of advice from the contracting officer, the Military Sealift Command shall take such action as may be necessary and practicable to assure proper utilization of Government vessels and private United States vessels in accordance with this Part and applicable regulations. The Commander of the Military Sealift Command or his designated representative is authorized to make any determination as to availability of United States-flag vessels required to assure such proper utilization.

(b)(1) Except as provided in paragraph (2) below, procuring activities shall include the clause in 7-104.19(b) in any contract which may involve the ocean transportation of supplies of the type described in 1-1402(i)(B) and (C). Additional provisions concerning the vessels to be used may be inserted in accordance with Departmental procedures.

(2) The contract shall include the clause in 7-104.19(c) in lieu of the clause in 7-104.19(b):

- (i) when determined by the Head of a Procuring Activity, or his designee, to be necessary to assure proper implementation of the policy expressed in 1-1402; or
- (ii) when the procuring activity has been instructed that particular supplies of the type described in 1-1402(i)(B) and (C) above are to be carried exclusively in private United States vessels:

1-1405 Responsibilities of the Contracting Officer. The contracting officer shall forward the applicable shipping document specified in the clauses set forth in 7-104.19(b) to the Department of the Navy (Commander, Military Sealift Command, Attn: M-5), Washington, D.C., 20390, for shipments made under arrangements by the contractor or by a Government agency other than the Military Sealift Command. |

1-1406 Reserved.

1-1407 Reserved.

1-1408 Reserved.

1-1409 Construction Contracts. It is the policy of the Department of Defense to require construction contractors, including subcontractors and suppliers, engaged in overseas work to utilize United States-flag vessels to the extent that such vessels are available at fair and reasonable rates for United States-flag vessels. This policy is applicable to any supplies, materials, or equipment shipped from the United States for either the performance of the work or for incorporation in the work. To carry out this policy, the clause in 7-603.41 shall be included in any construction contract which may involve the ocean transportation of materials. Upon request of the contracting officer, the Commander, Military Sealift Command, or his representative, will furnish advice as to the availability of United States-flag vessels for any particular shipment. These requirements shall not apply to Military Assistance Program projects, Agency for International Development projects, or to similar projects under the auspices of the Department of Defense where the recipient nation pays for or furnishes at least fifty percent of the transportation, in which event foreign-flag vessels may be used for not to exceed fifty percent of the gross tonnage for the project. The contracting officer shall comply with 1-1402(ii) relative to any Government-owned construction materials requiring ocean transportation.

1-1410 Reserved.

Part 15—Options

1-1500 Scope of Part. This Part applies to contracts for supplies and services other than for (i) the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property and (ii) research and development. It does not preclude the inclusion of appropriate options in such construction and research and development contracts.

1-1501 Definition. As used in this Part, an option is a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional quantities of the supplies or services called for by the contract, or may elect to extend the period of performance of the contract.

1-1502 Applicability.

(a) Option clauses may be included in contracts if increased requirements within the period of contract performance are foreseeable, or if continuing performance beyond the original period of contract performance may be in the best interest of the Government. Because options require offerors to guarantee prices for definite periods of time with no assurance that the options will be exercised, their improper inclusion could result in prices which are unfair to either the Government or the contractor. Therefore, an option clause normally should not be included if it can reasonably be foreseen that (i) minimum economic production quantities will be required at some future date, and (ii) startup costs, production lead time, and probable delivery requirements would not preclude adequate future competition.

(b) Option clauses shall not be included in contracts, and option provisions shall not be included in solicitations, if:

- (i) the supplies being purchased are readily available on the open market;
- (ii) the contractor would be required to incur undue risks (*e.g.*, the price or availability of necessary materials or labor is not reasonably foreseeable);
- (iii) an indefinite quantity contract or requirements contract is appropriate except that options for continuing performance may be used in such contracts;
- (iv) market prices for the supplies involved are likely to change substantially; or
- (v) the option quantities represent known firm requirements for which funds are available unless (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, and (B) realistic competition for the option quantity is impracticable once the initial contract is awarded.

(c) In recognition of (i) the Government's need in certain service contracts for continuity of operation and (ii) the potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period, but see 1-322.

(d) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award pursuant to 1-1504.

In unusual circumstances, solicitations may require that option quantities be offered at prices no higher than those for the initial quantities. Such circumstances may exist, for example, when (i) the option cannot be evaluated pursuant to 1-1504(c) or (d) because additional requirements are foreseeable but not known, and (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded. However, because such limitations as to option prices tend to cause a "frontloading" of costs on the basic quantity which are transferred from the option quantity to equalize the prices offered, their improper inclusion could result in prices which are unfair to the Government should the options not be exercised. Therefore, the procedures in 1-1503(d) shall be followed.

(e) The total of the basic and option periods shall not exceed five years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for five years in the case of supplies. This 5-year limitation shall not apply to automatic data processing equipment, software, and maintenance services; however, the basic option periods shall not exceed the approved systems life as defined in 4-1102.

1-1503 Procedures.

(a) If a contract is to contain an option clause, the solicitation must contain an appropriate option provision. The contract shall limit the additional quantities of supplies or services which may be procured, or the duration of the period for which performance of the contract may be extended under the option and will fix the period within which the option may be exercised. This period shall be set so as to afford the contractor adequate notice of the requirement for performance under the option but with respect to service contracts may extend beyond the contract completion date when exercise of the option would obligate funds not available in the fiscal year in which the contract would otherwise be completed. In fixing the period within which the option may be exercised, consideration shall be given to (i) necessary lead time in order to assure continuous production and (ii) the time required for additional funding and other necessary approval action. The period specified for exercising the option shall in all cases be kept to a minimum. The quantities and the period under option and the period during which the option may be exercised shall be justified and documented by the contracting officer in the contract file. If the contract is to be negotiated, the determination and findings shall set forth the approximate quantity to be awarded and the extent of the increase to be permitted by the option.

(b) If exercise of the option would result in increased quantities of supplies, the option may be expressed in terms of (i) percentage of specific contract line items, (ii) a number of additional units of specific contract line items, or (iii) additional numbered line items identified as the option quantity with the same nomenclature as line items initially included in the contract. If exercise of the option would result in an increase in the performance of services by the contractor, the option may similarly be expressed in terms of percentages, increase in specific line items, or additional numbered line items, expressed in terms of the units of work initially used in the contract such as man hours, man years, square feet, pounds or tons handled. If exercise of the option would result in an extension of duration of the contract, the option may be expressed in terms of an extended terminal date or of an additional time period, such as days, weeks, or months.

(c) Solicitations which allow the offer of option quantities at unit prices which differ from the unit prices for the basic contract quantities shall also state that varying prices may be offered for the option quantities depending on the quantities actually ordered and the date or dates when ordered. However, if the solicitation contains an *Evaluation of Options* provision pursuant to 1-1504, it shall also specify the price at which the options will be evaluated (*e.g.*, highest option price offered or option price for specified quantities or dates).

(d) If a solicitation is to require the offering of option quantities at prices no higher than those for the initial quantities pursuant to 1-1502(c), then:

- (i) the inclusion of such limitation as to option price shall be justified and documented by the contracting officer in the contract file;
- (ii) the solicitation shall also include a conspicuous notice adjacent to such limitation as to option price cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; and
- (iii) if the option is for additional quantities of supplies, an option quantity shall not exceed 50% of the initial quantity of the same contract line item or of the line item with the same nomenclature; *provided*, however, that in unusual circumstances a greater percentage of quantity may be approved in writing by the Chief of the Purchasing Office.

(e) When it is anticipated that the Government may exercise an option to fulfill Foreign Military Sales requirements, the solicitation shall notify contractors of the Government's intent in this regard and shall identify the Foreign Military Sales requirements. The contract shall contain an additional paragraph in the option provision substantially as set forth in 7-104.27(d) which provides for the Government's right to exercise the option for Foreign Military Sales purposes (see 6-1309).

1-1504 Evaluation.

(a) Except as otherwise provided in this paragraph, solicitations containing option provisions shall state that evaluation will be on the basis of the quantity to be awarded exclusive of the option quantity.

(b) If it is anticipated that the Government may exercise the option at time of award, the solicitation shall include an *Evaluation of Options* provision substantially as set forth in 7-2003.11(a).

(c) The option quantity may be considered in the evaluation for award of a firm fixed-price contract, a fixed-price contract with economic price adjustment provisions, or such other types of contracts as may be approved by Departmental procedures, if, before issuance of the solicitation, it has been determined by the Chief of the Purchasing Office that:

- (i) there is a known requirement which exceeds the basic quantity to be awarded, but either (A) the basic quantity is a learning or testing quantity and there is some uncertainty as to contractor or equipment performance, or (B) due to the unavailability of funds, the option cannot be exercised at the time of award of the basic quantity; *provided* that in this latter case there is reasonable certainty that funds will be available thereafter to permit exercise of the option; and
- (ii) realistic competition for the option quantity is impracticable once the initial contract is awarded and hence it is in the best interests of the Government to evaluate options in order to eliminate the possi-

bility of a "buy-in" (1-311). This determination shall be based on factors such as, but not limited to, substantial startup or phase-in costs, superior technical ability resulting from performance of the initial contract, and long preproduction lead time for a new producer.

In such cases, the solicitation shall contain an *Evaluation of Options* provision substantially as set forth in 7-2003.11(b).

(d) The option quantity may be considered in the evaluation for award of a fixed-price incentive contract if the determination in 1-1504(c) has been made before issuance of the solicitation, and if the solicitation (i) specifies a cost-sharing arrangement applicable to all proposals, and (ii) specifies that the ceiling price and target profit for the basic and option quantities are to be based on stated percentages of the offeror's target cost. These percentages shall be set forth in the solicitation and shall be applicable to all proposals. In such cases, the *Evaluation of Options* provision in 7-2003.11(c) shall be inserted in the solicitation.

1-1505 Exercise of Options.

(a) The exercise of an option by the Government requires the contracting officer's written notification to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests revision of price pursuant to such provision, or the provision applies only to the option quantity, the effect of economic price adjustment on prices under the option must be ascertained before the option is exercised.

(c) Options should be exercised only if it is determined that:

(i) funds are available;

(ii) the requirement covered by the option fulfills an existing need of the Government. A Foreign Military Sales (FMS) commitment undertaken by the United States Government on behalf of a foreign country constitutes such need. However, in the latter case, the contract shall expressly provide for the Government's right to exercise the option for FMS purposes (see 1-1503(e) and 6-1309); and

(iii) the exercise of the option is the most advantageous method of fulfilling the Government's need, price, and factors in (e) and (f) below considered.

(d) Insofar as price is concerned, the determination under (c)(iii) above shall be made on the basis of one of the following.

(1) A new solicitation fails to produce a better price than that offered by the option. If the contracting officer anticipates that the option price will be the best price available, he should not use this method of testing the market but should use one of the methods in (2), (3), or (4) below.

(2) An informal investigation of prices, or other examination of the market, indicates clearly that a better price than that offered by the option cannot be obtained (see 1-309).

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable, considering such factors as market stability and a comparison of the time since award with the usual duration of contracts for such supplies or services.

(4) Established prices are readily ascertainable and clearly indicate that a new solicitation can obviously serve no useful purpose.

(e) The determination under (c)(iii) above should, among other things, take into account the Government's need for continuity of operations and potential costs to the Government of disrupting operations, including the cost of relocating necessary Government-furnished equipment (as, for example, in certain repair and overhaul contracts for aircraft or other complex equipment).

(f) Insofar as factors other than price were considered for award of an originally negotiated procurement (see 3-501(b)Sec.D(i)), and are therefore for consideration in exercising the option, the determination under (c)(iii) above shall be made on the basis of one of the following.

(1) A new solicitation fails to produce a more advantageous offer than that offered by the option. If the contracting officer anticipates that the option will be the most advantageous offer, he should not use this method of testing the market but should use one of the methods in (2) or (3) below.

(2) An informal investigation of the market indicates clearly that a more advantageous offer than that offered by the option cannot be obtained, and that a new solicitation would obviously serve no useful purpose (see 1-309).

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates clearly that the option is the most advantageous offer obtainable, considering such factors as changes in relative technical merit of the contractor and competitors, market stability, and a comparison of the time since award with the usual duration of contracts for such supplies or services.

(g) When it has been determined that an option may properly be exercised in accordance with the principles set forth herein, such determination shall be set forth in writing and made a part of the contract file. Written notification to the contractor of the exercise of the option and any contract modification resulting therefrom shall cite the option clause contained in the original contract as authority for the procurement of the option quantity; and no citation under 10 U.S.C. 2304(a) is required. Reporting, however, shall be in accordance with the instructions applicable to DD Form 350 (Individual Procurement Action Report).

1-1506 Examples of Option Clauses. Examples of Option clauses are set forth in 7-104.27 and 7-1903.22.

Part 16—Reserved

For Novation coverage, see Section XXVI, Part 4.

1-1700 Value Engineering (VE).

1-1701 Definitions.

(a) Acquisition savings means savings resulting from the application of value engineering change proposals (VECPs) to contracts awarded by the same contracting office for essentially the same unit. Acquisition savings include:

- (i) Instant contract savings which are the net cost reductions on the contract under which the VECP was submitted and accepted and which are equal to the unit cost reduction multiplied by the number of units affected by the VECP, less the contractor's allowable development and implementation costs (on service contracts, the unit cost reduction is multiplied by the labor-hour rate agreed upon for the tasks involved; then the contractor's allowable development and implementation costs are subtracted from the total);
- (ii) Concurrent contract savings, which are measurable net reductions in the prices of other contracts of the contracting office in existence at the time the VECP was accepted; and
- (iii) Future contract savings, which are the product of the unit cost reduction under the instant contract, adjusted to consider the effects of learning, quantities, or other similar factors, multiplied by the number of units scheduled for delivery during the sharing period. If the instant contract is a multiyear contract, future contract savings include savings on all quantities funded after VECP acceptance.

(b) Collateral costs means agency costs of operation, maintenance, logistic support, or Government-furnished property.

(c) Collateral savings means those measurable net reductions resulting from the VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

(d) Contractor's development and implementation costs means those costs which the contractor incurred specifically in its development, testing, preparation, and submission of the VECP, as well as its costs to make the contractual changes required by Government acceptance of a VECP.

(e) Government costs means those agency costs that result directly from developing and implementing the VECP and any net increases in the cost of testing, operations, maintenance, and logistics support. They do not include the normal administrative costs of processing the VECP.

(f) Instant contract means the contract under which the VECP is submitted. It does not include increases in quantities after approval of the VECP due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, it does not include quantities funded after VECP approval. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

(g) Negative instant contract savings means that the acceptance of the VECP results in:

(i) a reduction in the instant contract of the actual unit cost;
(ii) an excess of contractor's development and implementation costs as compared to the unit cost reduction multiplied by the number of units affected; and
(iii) a consequent equitable adjustment increasing the instant contract price.

These savings are not a Government cost.

(h) Net acquisition savings means acquisition savings less Government costs.

(i) Sharing period means that period that extends to the 3 years after acceptance of the first item incorporating the VECP, or the delivery schedule in effect for all affected end items on the instant contract when the VECP is accepted, whichever is longer.

(j) Unit means the item or task to which the parties agree the VECP shall apply.

(k) Unit cost reduction means the amount of the decrease in unit cost of performance (without deducting any development or implementation costs and, for future contracts, with adjustments for learning, change in quantities, or other similar factors as necessary) resulting from using the VECP. On service contracts, the unit cost reduction is equal to the costs per hour multiplied by the number of hours per line item task saved by the VECP.

(1) Value engineering change proposal (VECP) means a proposal that:

(i) requires a change to the instant contract to implement; and

(ii) results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, *provided* That it does not involve a change:

(A) in deliverable quantities only;

(B) in R&D quantities or test quantities due solely to results of previous testing under the instant contract; or

(C) to the contract type only.

1-1702 General.

(a) Value engineering is the formal method by which contractors may (i) suggest contract changes which would reduce the overall cost to the Government and share in any resulting savings, or (ii) be required to establish a program to identify and submit to the Government methods of reducing costs to the Government through contract changes. Value engineering is concerned with eliminating nonessential functions or components of end items or tasks which contribute to the cost of their being acquired, operated, or logistically supported.

(b) There are two basic value engineering (VE) approaches: (i) an incentive program in which contractor participation is voluntary, and (ii) a mandatory program in which the Government requires and pays for a specific VE program effort. In the first, contractors are responsible for developing and submitting VECPs using their own resources. The contract provides payment for these costs if a VECP is accepted. Use of the voluntary approach should not in itself increase costs to the Government. Under the second approach, the contractor must perform a VE effort of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract schedule. The objective of this VE program requirement is to ensure that the contractor's VE effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

1-1703 Policy.

(a) The Government shall provide contractors with a substantive financial incentive to develop and submit VECPs.

(b) The Government shall provide contractors with (i) objective and expeditious processing of VECPs submitted and (ii) a fair share of the savings on accepted VECPs.

(c) Subcontractors shall be encouraged to submit VECPs through incorporation of VE clauses in appropriate subcontracts.

(d) Value engineering incentive payments do not constitute profit or fee within the meaning of the limitations imposed by 10 U.S.C. 2306(d). (See 3-405.6(c)(2).)

1-1704 Clauses.

1-1704.1 *Value Engineering Clause.* The contracting officer shall include the Value Engineering Clause in 7-104.44 in every supply or service contract of $100,000 or more. The clause may be included in supply or service contracts of lesser value if the contracting officer sees a potential for significant savings. If the contracting officer chooses to use a VE clause in a contract under $100,000, the appropriate clause referred to in 1-1704.1 through 1-1704.6 shall be used. Unless authorized by the chief of the contracting office, the contracting officer shall not include the clause in the following contracts:

(i) research and development other than full-scale engineering development;

(ii) engineering services from not-for-profit organizations, architect-engineer services, and personal services;

(iii) product or component improvement unless the VE clause application is restricted to areas not covered by provisions for product or component improvement; or

(iv) standard commercial items that do not involve any special requirements and specifications (such as packaging specifications).

1-1704.2 *Value Engineering, Alternate I.* The contracting officer may require a mandatory VE effort by using the clause in 7-104.44, as changed by Alternate I, in any supply or service contract when the contracting officer considers that substantial savings to the Government may result. The VE program requirements may be specified by the Government in the solicitation or, in the case of negotiated contracting, proposed by the contractor as part of the proposal and included as a subject for negotiation.

1-1704.3 *Value Engineering, Alternate II.* If the contracting officer determines that both a VE incentive and mandatory program requirement are appropriate, the contracting officer shall include in the supply or service contract the clause in 7-104.44, as changed by Alternate II. The contracting officer shall restrict the VE program requirement in the contract schedule to well-defined areas of performance. The clause applies a VE program to the specified areas and a VE incentive to the remaining areas of the contract.

1-1704.4 *Value Engineering, Alternate III.* When the head of the contracting activity determines the cost of computing and tracking collateral savings will exceed the benefits to be derived, the contracting officer shall include in the contract the clause in 7-104.44, as changed by Alternate III.

1-1704.5 *Value Engineering, Alternate IV.* The contracting officer may include a mandatory VE program requirement in an architect-engineer contract. However, no VE sharing provisions shall be included. The contracting officer shall use the clause in 7-104.44, as changed by Alternate IV.

1-1704.6 *Value Engineering Incentive--Construction Clause.* The contracting officer shall include the clause in 7-602.50, Value Engineering Incentive--Construction, in all fixed-price and cost-reimbursement construction contracts of $100,000 or more, other than incentive contracts. The clause may be included in fixed-price or cost-reimbursement construction contracts under $100,000 if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts.

1-1705 Processing VECPs.

(a) The contracting officer shall provide the contractor prompt written notification if (i) the VECP evaluation period will exceed 45 days after receipt of the VECP by the Government (the notification shall include the estimated decision date and the reasons for the additional time required), or (ii) the VECP is not accepted (the notification shall explain the reasons for nonacceptance).

(b) The contracting officer shall cite the Value Engineering clause (see 1-1704) when modifying the contract to incorporate a VECP or when making any VE-related change.

(c) The Government's decision to accept or reject a VECP; the Government's decision as to which of the sharing rates apply when the clause in 7-104.44, as changed by Alternate II, is used; and the Government's computation of collateral costs or collateral savings are not subject to the Disputes clause.

1-1706 Sharing Arrangements. The two types of savings shared by the Government and the contractor as a result of accepted VECPs are acquisition savings and collateral savings.

1-1706.1 *Sharing of Acquisition Savings.*

(a) The sharing base for acquisition savings is the number of affected end items on contracts of the contracting office approving the VECP. The Head of the Contracting Activity (HCA) may extend the sharing base from the contracting office throughout the activity if the HCA determines in writing that it would be more equitable or would significantly increase the contractor's incentive. The sharing base may be further expanded by the Secretary concerned. The sharing rates (Government/contractor) for acquisition savings for supplies and services are based on the type of contract, the Value Engineering clause, and the type of savings as follows:

	Incentive (Voluntary)		Program Requirement (Mandatory)	
TYPE OF CONTRACT	Instant	Concurrent and Future	Instant	Concurrent and Future
Fixed-Price (Other than Incentive)	50/50	50/50	75/25	75/25
Incentive (Fixed-Price or Cost)	*	50/50	*	75/25
Cost-Reimbursement** (Other than Incentive)	75/25	75/25	85/15	85/15

* Same ratio as the contract's cost incentive ratio.
** Includes cost-plus-award-fee contracts.

(b) Sharing on construction contracts applies only to savings on the instant contract. The sharing rates (Government/contractor) are as follows:

Fixed-Price*	45/55
Cost-Reimbursement*	75/25

* Other than incentive

(c) The contractor shall share in the savings on all affected units until the originally scheduled delivery date of the last affected unit under the instant contract or for 3 years after acceptance of the first unit incorporating the VECP, whichever is longer. For engineering development and low rate initial production contracts, the future sharing period shall encompass scheduled deliveries, equal in number to the quantity required over the highest 36 consecutive months of planned production, based on the Five Year Defense Program (FYDP) or other planning documentation at the time the VECP is accepted. Savings are paid through the contract under which the VECP was accepted. Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings. On incentive contracts, the contractor's share of concurrent, future, and collateral savings shall be paid as a separate firm fixed-price contract line item on the instant contract. The contractor shall be responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequately identifying the first delivered unit incorporating the applicable VECP.

(d) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after their award, modify the instant contract to provide the contractor's share of savings. Use of the lump-sum method must be agreed to by the contractor. For future acquisition savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items which will be purchased by the contracting office during the sharing period. In deciding to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider:

- (i) the accuracy with which the number of items to be purchased during the sharing period can be estimated and the probability of actual production of the projected quantity;
- (ii) the availability of funds for a lump-sum payment; and
- (iii) the administrative expense of otherwise amending the instant contract as future contracts are awarded.

(e) The contractor's profit or fee shall be excluded when calculating the net savings on instant and future contracts.

(f) Departments shall establish procedures for funding and payment of the contractor's share of future savings.

1-1706.2 *Sharing of Collateral Savings.* The contractor's share of collateral savings is 20% of the estimated savings to be realized during an average year of use but shall not exceed (i) the contract's firm fixed-price, target price, target cost, or estimated cost at the time the VECP is accepted; or (ii) $100,000, whichever is greater.

1-1707 Relationship to Other Incentives. The Government shall offer the fullest possible range of motivation to contractors while precluding duplication of incentives. Those benefits of an approved VECP not rewardable under performance, design-to-cost, or similar incentives of the contract shall be rewarded under a Value Engineering clause. The targets of such incentives affected by the VECP shall not be adjusted because of the acceptance of the VECP.

Part 18—Post-Award Orientation of Contractors

1-1801 Scope of Part. This Part prescribes the policy and procedures for post-award orientation in connection with contracts and subcontracts. This Part is not applicable to construction contracts as defined in 16-400.

1-1802 Policy. When it is determined after contract award, in accordance with the factors set forth in 1-1803.1, that the contractor does not or may not have a clear understanding of the scope of the contract, the technical requirements, or the rights and obligations of the parties, it is essential that the Government initiate post-award orientation action to clarify contract requirements and resolve misunderstandings. A mutual understanding may be achieved by conducting a post-award orientation conference, as provided in 1-1803, to assure that all matters requiring clarification or resolution are considered and contractual requirements explained. In less complex contracts, the objective may be achieved without a conference by writing the contractor a letter as provided in 1-1806. For the post-award orientation of subcontractors, see 1-1804.

1-1803 Post-Award Orientation Conferences.

1-1803.1 *Factors.* In selecting contracts for post-award orientation conferences, the following factors shall be considered:

(i) nature and extent of the pre-award survey and discussions with the contractor,
(ii) technical complexity of the item or service,
(iii) end use or relationship of the item or service to critical programs,
(iv) urgency of the delivery schedule,
(v) length of the planned production cycle,
(vi) past performance of the contractor,
(vii) procurement history of the item or service,
(viii) type and value of the contract,
(ix) provisioning requirements,
(x) contractor's experience with defense contracts or with the item or service being procured,
(xi) extent of subcontracting, and
(xii) hazardous material or operations and safety precautions required.

1-1803.2 *Initial Action.*

(a) The need for a post-award orientation conference normally will be established as a result of substantive review and analysis of the contract by the Contract Administration Office. However, the contracting officer or technical representative of the purchasing office may initiate the request for a conference. A conference of Government personnel normally shall be held prior to notifying and conferring with the contractor to assure that the Government position on all matters is established.

(b) An orientation conference shall be held as soon as possible after contract award when analysis of the contract or other information indicates existing or potential problems which may adversely affect performance. The office which determines the need for a post-award orientation conference normally will make all necessary arrangements to:

(i) Conduct a preliminary meeting of Government personnel,
(ii) establish the time and place of the orientation conference,

(iii) prepare an agenda,
(iv) notify all participants,
(v) designate a chairman, and
(vi) prepare a summary report of the conference.

When the purchasing office initiates the request for a conference, the above arrangements may be made by that office or, at its request, by the Contract Administration Office.

1-1803.3 *Agenda*. The agenda of an orientation conference may include such matters as:

(i) special contractual provisions,
(ii) clarification of specifications and other work requirements,
(iii) production planning,
(iv) furnishing and control of Government property,
(v) billing and payment procedures,
(vi) reporting requirements,
(vii) processing of engineering changes and change orders,
(viii) quality control and testing requirements,
(ix) provisioning requirements,
(x) packaging and shipping,
(xi) subcontract consent,
(xii) prime contractor responsibility for subcontracts,
(xiii) allowability of cost determinations,
(xiv) incentive features and value engineering,
(xv) security requirements,
(xvi) progress target dates,
(xvii) major problem areas or other appropriate topics, and
(xviii) procedures for complying with 7-104.9(p).

1-1803.4 *Participants*. It is essential that all parties involved in the execution, administration, and performance of a Government contract have a clear and mutual understanding of the scope of the contract, the technical requirements, and the rights and obligations of the parties. Participants in a post-award orientation conference may include, as appropriate, representatives from the purchasing office and the Contract Administration Office, other Government personnel concerned, and the contractor's representatives.

1-1803.5 *Conference Procedure*. The chairman of the conference shall conduct the meeting. Unless a specific contract change has been agreed to by the contracting officer at the preliminary meeting of Government personnel, the chairman will emphasize that the conference is not being held for the purpose of changing the contract. The contracting officer may make commitments or give directions within the scope of his authority, and he shall reduce to writing and sign any such commitment or direction. Participants who are without authority to bind the Government contractually shall not take action which in any way alters the provisions of the contract. Information and guidance given merely to explain existing provisions and requirements of the contract may, however, be given, but only by participants acting within the scope of their authority. All such information and guidance shall be specifically included in the summary report (see 1-1805).

1-1804 Subcontract Conferences. The prime contractor is generally responsible for conducting any necessary post-award orientation conferences with subcontractors. However, in exceptional cases involving subcontracted items or services of technical complexity, the prime contractor may invite the participation of the Government in such conferences or the Government may request the prime contractor to initiate such a conference with the subcontractor. Representatives from the Contract Administration Office administering the prime contract and subcontract should be included as participants. Government participants in such conferences must recognize the lack of privity of contract between the Government and the subcontractor, and shall not give commitments, directions, or take any action which change or are inconsistent with the provisions of the subcontract.

1-1805 Forms and Reports. Post-Award Conference Record (DD Form 1484) (see F-200.1484) shall be used in preparing the agenda and conducting the conference to assure that all significant matters are covered. A summary report of the conference shall be prepared under the supervision of the chairman and signed by him. The report shall cover all items discussed, including areas requiring resolution, controversial matters, and the names of the participants assigned responsibility for further actions, including the due dates for such actions. DD Form 1484 may be utilized as the summary report, where appropriate. Copies of the summary report shall be furnished to the purchasing office, the Contract Administration Office, the contractor, and other participants and activities requiring the information.

1-1806 Post-Award Letters. In less complex contracts, a letter to the contractor may suffice in lieu of a conference. When such a letter is appropriate, it should identify the Government representative responsible for administering the contract, and cite any unusual contract requirements such as special reports, revised military specifications, preproduction tests, subcontracting consent requirements, Government property to be furnished, and any other significant requirements. (See, for example, the items in DD Form 1484.)

Part 19—First Article Approval

1-1900 Scope of Part. This Part sets forth the policy, implementing instructions, and contract clauses with respect to first article testing and approval.

1-1901 Definitions. As used in this Part:

(a) *first article* includes preproduction models, initial production samples, test samples, first lots, pilot models, and pilot lots; and

(b) *approval* involves testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production under a contract.

1-1902 General.

(a) A requirement for first article approval is designed to assure that the contractor can furnish a product that is satisfactory for its intended use and, therefore, minimizes risks for both the contractor and the Government. In determining whether first article approval is to be required, consideration shall be given to increased cost and time of delivery by reason of the test, the risk to the Government of foregoing such tests, and the availability to the Government of other less costly methods of achieving the desired quality. First article approval tests are particularly appropriate when:

- (i) the interest of the Government requires assurance that a product is satisfactory for its intended use when the product—
  - (A) has not been previously furnished by the contractor to the Government; or
  - (B) has been previously furnished by the contractor to the Government but there have been subsequent changes in processes or specifications, or production has been discontinued for an extended period of time; or
  - (C) is described by a performance specification; or
- (ii) it is essential to have an approved first article to serve as a manufacturing standard.

(b) Except in unusual procurements, first article approval tests shall not be required in contracts:

- (i) for research or development;
- (ii) where the specifications require qualification of the product prior to award, i.e., where a Qualified Product List has been established for the product;
- (iii) for supplies normally sold in the commercial market; or
- (iv) for supplies covered by complete and detailed technical specifications, unless the technical or performance requirements are so novel or exacting that it cannot reasonably be anticipated that such supplies will meet the technical or performance requirements without first article approval.

(c) Pending approval of the first article, acquisition of materials or components, or commencement of production is normally at the sole risk of the contractor. In such cases, the delivery schedule shall provide sufficient time for acquisition of materials and components, and production after notification of first article approval. When requirements necessitate a production delivery schedule which does not provide sufficient time for the contractor to perform on this basis, the contracting officer may, prior to approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent essential to meet the production delivery schedule. Costs incurred based on such authorization are allocable to the contract prior to first article approval for purposes of progress payments, if progress payments are authorized by the contract, and termination settlements in the event the contract is terminated for the convenience of the Government. This authorization may be given to a contractor only after approval at a level higher than the contracting officer. When a need for this authorization is anticipated, the First Article Approval clause included in the solicitation (see 1-1903(c)(ii)) shall be modified as shown in 7-104.55(c).

1-1903 Fixed-Price Type Contracts.

(a) The solicitation for a fixed-price type contract which is to contain a requirement for first article approval shall inform bidders or offerors that where supplies identical or similar to those called for have been previously furnished by the bidder or offeror and have been accepted by the Government, the requirement for first article approval may be waived by the Government. To permit proper evaluation of bids or offers where one or more bidders or offerors may be eligible to have first article approval tests waived, the solicitation shall permit the submission of alternative bids or offers—one including first article approval tests and the other excluding such tests; shall state clearly the relationship of the first article to the contract quantity (see paragraph (e) of the contract clauses in 7-104.55), and shall provide for:

(i) Delivery schedules for the production quantity in accordance with 1-305; as appropriate, the delivery schedules—

(A) may be the same whether or not first article approval is waived, or

(B) may provide for a shorter delivery schedule where the first article approval is waived and earlier delivery is in the interest of the Government, *provided* that in the latter case any difference in delivery schedules resulting from a waiver of first article approval shall not be a factor in evaluation for award. Except as provided in 1-1902(c), the delivery schedule based on first article approval shall provide sufficient time for acquisition of material and production after notification of first article approval. The delivery schedule for the first article itself shall be set forth in the First Article Approval clause;

(ii) the submission of the contract numbers, if any, under which identical or similar supplies were previously accepted from the bidder or offeror by the Government; and

(iii) If the Government is to be responsible for first article testing, the cost to the Government of such testing shall be a factor in the evaluation of the bids and proposals to the extent that such cost can be realistically estimated. This estimate shall be documented in the contract file and clearly set forth in the solicitation as a factor which will be considered in evaluating the bids or proposals.

(b) When it is known that first article approval will be required of all bidders or offerors, the provisions of (a) above will not apply.

(c) The solicitation shall also:

- (i) state whether an approved first article shall serve as a manufacturing standard; and
- (ii) include the applicable clause set forth in 7–104.55, designating whether the contractor or the Government is responsible for first article approval testing—
  - (A) When the contractor is responsible for such testing, the solicitation and resulting contract shall contain or reference:
    - (1) the performance or other characteristics which the first article must meet, and
    - (2) the detailed technical requirements for first article approval tests, including the necessary data to be submitted to the Government in the first article approval test report.
  - (B) When the Government is responsible for such testing, the solicitation and resulting contract shall contain or reference:
    - (1) the performance or other characteristics which the first article must meet in order to be approved, and
    - (2) the test to which the first article will be subjected.

(d) For clothing procurements involving Government-furnished material, the first article clause prescribed by 7–104.55(b) may be modified to (i) specify criteria for acceptance of the first article, (ii) place limitations on cutting of material prior to first article approval, and (iii) provide for use of an approved first article as a manufacturing standard for quality of workmanship and appearance.

1–1904 Cost Reimbursement Type Contracts. When first article approval tests are required in cost-reimbursement type contracts, the applicable clause in 7–104.55, appropriately modified, shall be included.

1–1905 Government Administration Procedures.

(a) Immediately upon shipment by the contractor of a first article or first article approval test report to the destination specified in the contract, the contract administration office shall:

- (i) advise the consignee of the contractual requirements for first article approval; and
- (ii) request from the consignee advice as to the date that testing or evaluation will be completed.

(b) The Government laboratory or other activity responsible for first article approval shall advise the purchasing office, in sufficient time to permit notification to the contractor as required by the contract, whether the first article should be approved, conditionally approved, or disapproved. Upon such notification, the contracting officer at the purchasing office shall advise the contractor of his approval, conditional approval, or disapproval, with simultaneous notification to the contract administration office. The notification to the contract administration office shall include the shipment number relating to the first article, when available, and the contract line item number of the first article. Changes in the drawings, designs, or specifications determined by the Government to be necessary shall be accomplished pursuant to the *Changes* clause and not by the notification of approval, conditional approval, or disapproval.

GENERAL PROVISIONS

Part 20—Limitation of Cost or Funds Under Cost Type Contracts

1-2000 Scope of Part. This Part sets forth information for, and the responsibilities of, the contracting officer with respect to the funding of cost-reimbursement type contracts. It includes material pertaining to:

(i) availability of funds;

(ii) issuance of a change order, a direction to correct or replace defective items or work, or a termination notice; and

(iii) action to be taken when the limit of the funds allocated or the estimated cost is being approached.

1-2001 Limitation of Cost or Funds.

(a) When using a cost-reimbursement type contract, the contracting officer will assure that sufficient funds are available at all times to cover the estimated cost and fee (if any) if the contract is fully funded, or the amount allotted and the corresponding increment of fee (if any) if the contract is incrementally funded.

(b) Under a cost-reimbursement type contract, the contracting officer may, without immediately increasing the funds available for the contract, issue a change order, a direction to correct or replace defective items or work, or a termination notice.

> Note: The Contractor is obligated to comply with such order, direction or notice as long as funds are available within the estimated cost or amount allotted to the contract. However, the Contractor is not obligated to proceed further once the estimated cost or amount allotted is reached. Therefore, the Contracting Officer is cautioned to have funds available, if possible, to assure compliance with the directed action.

If it is necessary to increase the estimated cost or amount allotted to a contract to cover termination expenses, the contracting officer may direct that such increase is solely for the purpose of funding termination expenses.

(c) The contracting officer shall take prompt and formal action as soon as he is notified or becomes aware that a contractor is approaching the limits of the funds allotted to a contract or is approaching the estimated cost of the contract (see 7-203.3 and 7-402.2). He shall immediately obtain from the proper activity funding and programming information pertinent to the continuation of the contract. The contracting officer shall, in addition, promptly notify the contractor in writing that:

(i) additional funds have been allocated, or the estimated cost increased, in a specified amount;

(ii) the contract is not to be further funded, and instruct the contractor to submit a proposal for an adjustment of fee, if any, based on percentage of completion of work performed in relation to the total work required under the contract;

(iii) the contract is to be terminated; or

(iv) the Government is considering whether additional funds will be allocated or the estimated cost increased, and that the contractor is entitled by the terms of his contract to stop work when the cost or funding limit has been reached unless and until further funds are allocated or the estimated cost increased, and that any work beyond the cost or funding limit is at his own risk.

All government personnel should note that encouraging a contractor to continue work in the absence of funds may result in a violation of Revised Statutes Section 3679 (31 U.S.C. Sec. 665), and may subject the violator to criminal penalties.

GENERAL PROVISIONS

Part 21—Procurement Planning

1-2100 Procurement Planning.

1-2100.1 *General.*

(a) Procurement planning is the process by which the efforts of all personnel responsible for the acquisition of defense materiel are coordinated and integrated through a comprehensive plan for the development and production of an individual item or weapon system for the purpose of obtaining a quality product, in a timely manner and at a reasonable cost. It involves analysis of the requirements and the documentation of technical, business, policy, operational, and other procurement considerations into a comprehensive procurement plan portraying realistic milestones to be met in achieving the goals of a specific program over its procurement life cycle. The Procurement Plan should be keyed to the Department of Defense Five Year Defense Program, applicable budget submissions, and the Decision Coordinating Paper/Program Memorandum, as appropriate.

(b) Procurement Plans will be prepared on a system basis covering the major items of hardware/equipment to be developed/produced including Government-furnished equipment and system support.

1-2100.2 *Applicability.*

(a) While the procurement planning provided for herein applies to the more complex and costly programs to procure hardware developed and produced to satisfy the need for modern military equipment, its principles may also be adapted to the procurement of all supplies and equipment. Although some degree of procurement planning is necessary to buy shoes, subsistence, or other common items of supply, the detailed planning described herein is not applicable to such items.

(b) Procurement Plans shall be prepared for development procurements described in 4-101(a) whose total procurement cost is estimated at $2,000,000 or more and for production procurements whose contractual cost is estimated at $15,000,000 for all years or $5,000,000 for any fiscal year. However, this does not preclude the preparation of Procurement Plans for any procurement, whether short- or long-range, when determined necessary by the Departments. Procurements which represent a final buyout or a one-time buy are exempted from the requirements of this paragraph.

1-2100.3 *Initiation of Procurement Planning.* Procurement planning should commence with the initiation of the documentation to obtain program/project approval. As a general rule, the Procurement Plan should be prepared concurrently with the request for program funding.

1-2100.4 *Responsibility for Preparation.* The Program Manager, or other official responsible for the program concerned has overall responsibility for the requisite procurement planning as he has for all other planning for the program. The contracting officer or his designee shall support this official by preparing and maintaining the Procurement Plan. He shall enlist the aid of cognizant engineering, production, logistics, quality assurance, maintenance and other functional staff business management personnel at command and subordinate buying activity levels as required. The Head of the Procuring Activity (HPA), or the chief procurement official of the buying activity, in coordination with the program

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manager, must insure that the objectives of the Procurement Plan are realistic and achievable and that solicitations and contracts will be appropriately structured to equitably distribute technical, financial, and economic or business risks, consistent with the program phase of the acquisition, the technical requirements and needs of the specific program, and salient business and legal constraints. All personnel engaged in the management of the procurement process, including program, technical and fiscal personnel, are essential to the comprehensive procurement planning and preparations necessary to achieve the procurement objectives. These personnel must be made cognizant of their responsibilities and actively participate in the development and preparation of the procurement plan, if procurement planning is to be successful.

1–2100.5 *Requirements for Procurement Plan Updates.* Procurement Plans shall be updated, as appropriate or necessary, in accordance with specific dates set forth in the plan or whenever changes occur that will materially affect the method of procurement and/or objectives of the plan. Updating for minor changes is not required and should be avoided.

1–2100.6 *Approval.* Procurement Plans shall be approved in accordance with Departmental procedures.

1–2100.7 *Support for Determination and Findings.* Procurement Plans may be used to support a Determination and Findings (D&F) in accordance with ASPR Appendix J.

1–2101 Guidelines for the Development of Procurement Plans. The principal purpose of the Procurement Plan is to facilitate attainment of the procurement objectives. The procurement plan must, therefore, identify those milestones at which decisions should be made. Certain requirements, technical, and funding decisions must be made far ahead of the contracting phase of the procurement. The procurement plan should provide a matrix for the integration and coordination of the efforts of all personnel engaged in the management of the procurement process, including those engaged in the determination of requirements, development of a technical data package, funding, contracting, and contract administration.

1–2102 Sample Format and Content of Procurement Plans. The following format is illustrative of a Procurement Plan and is designed merely to give guidance in the preparation of Procurement Plans. It may be modified to suit the procurement being planned as well as the phase of program formulation. The narrative portion of the Procurement Plan should be brief but comprehensive. It should provide not only the background necessary to understand the procurement but also a plan for acquisition of the item or system, including the rationale and assumptions upon which the plan is predicated. It should reference other documents where applicable. The milestone chart introduces discipline into the planning process by identifying in graphic form the points at which critical decisions must be made and time factors that must be observed when action is necessary to produce an item or to make a competitive buy possible. The chart not only forces consideration of all factors involved but it also provides a visual portrayal of the decisions necessary to achieve objectives and indicates the time at which they should be made. The milestone chart portrays the step-by-step planning and normally covers the period from advance development through delivery of the production items. The chart tells the story of time, cost and quantity of required items, illustrating milestones which must be recognized in the decision making process. However; it is important to recognize that the format of the milestone chart is flexible, because the same milestones may not be present in every procurement program.

ILLUSTRATIVE PROCUREMENT PLAN FORMAT
PROCUREMENT PLAN NO. ....

PROGRAM ....
PROGRAM MANAGER ....

DESCRIPTION OF PROGRAM / SYSTEM / COMMODITY, ETC.
....
....
....

APPROVED: *Procurement Representative* ...., *date* ....
Program Manager ...., *date* ....

(NARRATIVE PORTION)

1. *A description of the program, item or system.* Include the customary military nomenclature, a brief nontechnical description and statement of general application, and a description of associated materials and services. Discuss related in-house effort.

2. *Program Funding (R&D and Production) including a summary of monies in the FYDP/Budget Submissions.* Include specific references to budget line items and program elements, where applicable, estimated production unit cost, and total cost for remaining production. Describe the estimated cost for the contracts and how the cost was derived.

3. *Delivery Requirements, both R&D and Production Contracts.* Describe the basis for establishing the delivery requirement and justification for such urgency if it results in concurrency of development/production or is a basis for justification for sole source procurement.

4. *Applicability of a Decision Coordinating Paper (DCP) or Program Memorandum Defense System Acquisition Review Council (DSARC) or Internal Service Reviews.* Describe the options set forth in the DCP / Program Memorandum and delineate which option the Procurement Plan (PP) supports. Delineate the DSARC/Internal Reviews on the milestone chart.

5. *Background and Procurement History (a brief factual summary).* Provide a brief statement of the technical and contractual history of the material or services being procured.

6. *Discussion of Program Risk, Including Technical, Cost, and Schedule Risk.* Provide a discussion of major areas of technical risk, and describe what efforts are planned or

underway to reduce risk and provide a comparison of any test results with the goals established for the item or program at its inception. If concurrency is planned, discuss its effects on cost and schedule risk. As appropriate, discuss effect of business base changes of major contractors' workload on program cost.

7. *Integrated Logistics Support Planning Concept.* Describe the extent of integrated logistic support planning to date including references to approved plans. Discuss the assumptions determining contractor or service support, both initially and over the program life cycle.

8. *Application of Design to Cost.* Describe the design to cost objective and the assumptions underlining the objective including the rationale for quantity, learning curve, and economic adjustment factors. Indicate specific solicitation and contractual requirements to be imposed. (See 1-338)

9. *Application of Life Cycle Cost (LCC).* Discuss how life cycle costing will be considered or indicate reasons why it is not being applied. If appropriate, discuss the cost model used to develop LCC estimates.

10. *Reliability and Maintainability (R&M) Objective, Including Warranties.* Discuss the mission profile, R&M program plan, R&M predictions, redundancy, qualified parts lists, parts and material qualification, R&M requirements imposed on vendors, failure analysis, corrective action and feedback, and R&M design reviews and trade-off studies.

11. *Test and Evaluation Approach.* Describe the test program for each major phase, both of the contractor and of the Government. If concurrency is planned, discuss the extent of testing accomplished prior to production release.

12. *Management Information / Program Control Requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the Contractor's effort.

13. *Approval for Operational Use.* Indicate the date Approval for Operational Use has been/will be obtained. If waivers are requested, describe the need for the waiver.

14. *Government Furnished Material / Facilities / Component Breakout.* Indicate material and facilities that will be furnished to contractors and any problems associated therewith. Discuss component breakout for competition, if applicable.

15. *Application of Should Cost.* Describe the application of should cost studies to the program.

16. *Milestone Chart Attachment Depicting the Objectives of the Acquisition.* Provide a chart in general accordance with the sample milestone chart.

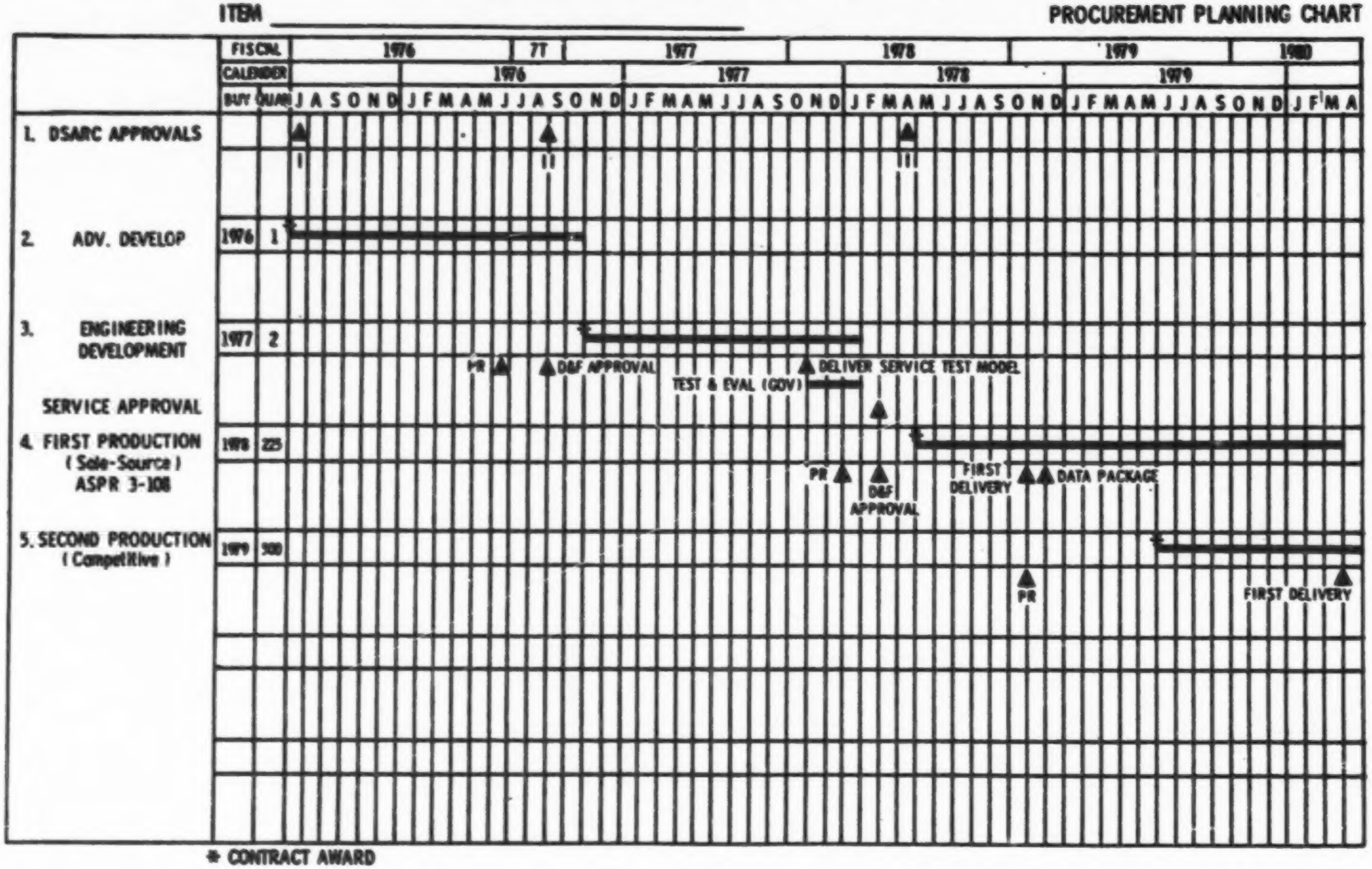
17. *Milestones for Updating the Procurement Plan.* Indicate when the plan will be updated. Update should be scheduled to coincide with DSARC reviews and the transition from one phase to another (full-scale development to production).

18. *Identification of Participants in the PP Preparation.*

19. *Procurement Approach for each Proposed Contract.*
    - a. *Item description.*
    - b. *Estimated cost.*
    - c. *Proposed sources and basis for selection.* If sole source is recommended, discuss why competition cannot be used.
    - d. *Source selection procedures.* If formal source selection procedures will be used, discuss milestones for development of the plan and provide a general overview of how the selection is to be conducted.
    - e. *Contract type.* Provide rationale for recommendation of contract type.
    - f. *Negotiation authority recommended.* Discuss basis for recommendation of negotiation exception. If the PP is used to support a Secretarial D&F, provide appropriate information required by Appendix J, if not already provided elsewhere.
    - g. *Reprocurement data.* Provide a complete discussion of use of reprocurement data to increase competition, including funding available for reprocurement data and the contractual approach to acquiring such data, including proprietary rights and patent considerations.
    - h. *Other considerations, as applicable.* Discuss application of Small Business, Labor Surplus Area, the Industrial Readiness Program, The Defense Production Act, energy conservation measures, standardization concepts, foreign sales implications, special contractual clauses and ASPR deviations.
    - i. *Alternative procurement approaches considered.* Briefly discuss the merits and shortcomings of other approaches including contingency plans.
    - j. *Milestones for the procurement cycle.* Address the following subjects and any others, as appropriate:
        - PP Approval
        - D&F Approval
        - Completion of preparation of procurement package
            - Statement of Work
            - Specifications
            - Data requirements
            - Purchase request
        - Issuance of Solicitation
        - Evaluation of proposals, audits, and field reports
        - Beginning and completion of negotiations
        - Contract preparation, review, and clearance
        - Contract award

ILLUSTRATIVE FORMAT

PROCUREMENT PLAN NO. _____



GENERAL PROVISIONS

Part 22—Industrial Preparedness Production Planning

1–2200 Scope of Part. This Part establishes uniform procurement policy guidance and procedures for the Department of Defense in planning with industry for the establishment and retention of industrial base capability essential to national defense for production during periods of national emergencies.

1–2201 Definitions.

(a) *Industrial Preparedness Planning* - Plans designed to maintain an adequate industrial base to support DoD requirements for selected essential military items in a national emergency.

(b) *Industrial Base* - That part of the total privately-owned and Government-owned industrial production and maintenance capacity of the United States, its territories and possessions, as well as capacity located in Canada, expected to be available during emergencies to manufacture and repair items required by the military services.

(c) *Emergency (National)* - A condition declared by the President or Congress by virtue of powers previously vested in them which authorizes certain emergency actions to be undertaken in the national interest. Actions to be taken may include partial or total mobilization of national resources.

(d) *Planned Producer* - An industrial firm which has indicated its willingness to produce specified military items in a national emergency by completing an Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

(e) *Planned (or Planning) Item* - Any item selected for industrial preparedness planning under the criteria of DoD Instruction 4005.3, "Industrial Preparedness Production Planning Procedures."

1–2202 General. The Industrial Preparedness Production Planning (IPPP) program is conducted jointly among DoD components and industry to provide a means for correlating industrial capabilities and military requirements for the orderly retention, improvement, and rapid application of industrial capability to military production during an emergency.

1–2203 Policy.

(a) The Department of Defense will conduct Industrial Preparedness Production Planning to assure capability for the sustained production of essential military items to meet the needs of the U.S. and Allied Forces during an emergency.

(b) In planning for the production of selected items, preference shall be given to the use of privately-owned facilities, so as to minimize the need for Government investment. Government-owned production facilities will be included in the industrial base only when:

(i) private industry is unable or unwilling to provide the facilities necessary to support DoD requirements; or

(ii) they are determined to be necessary for reasons of national security or to assure a quick response capability to meet fluctuating or job lot demands.

(c) Current procurements will be integrated, when applicable, with Industrial Preparedness Production Planning requirements.

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1-2204 Limitations.

(a) Industrial Preparedness Production Planning will be limited to those weapon systems and items selected by the Military Departments and DSA in accordance with policy established in DoDI 4005.3, "Industrial Preparedness Production Planning Procedures."

(b) Industrial Preparedness Production Planning with foreign sources, except Canada, is prohibited.

1-2205 Existing Authority Affecting the Industrial Base.

Specific authority under current contracting procedures to accomplish industrial planning actions includes the following:

(i) leasing of Government-owned property to planned emergency producers under the authority of the Military Leasing Act of 1947 as codified in 10 U.S.C. 2667;
(ii) purchases in the interest of national defense or industrial preparedness (see 3-216);
(iii) obtaining Jewel Bearings, Miniature and Instrument Ball Bearings, and Precision Components for Mechanical Time Devices (see 1-2207);
(iv) use of multiyear contracts (see 1-322.1(b)(1)(viii) and 3-216);
(v) providing Government production and research property to contractors (see 13-301); and
(vi) preservation of domestic industrial base (see Sec. VI).

1-2206 Applicable Procedures. To assure the most effective planning approach, each DoD component will determine the specific type and depth of Industrial Preparedness Production Planning for each planning item. One or more of the authorities listed in 1-2205 above may be appropriate to accomplish a particular planning action. Specific procedures as applicable to a current procurement action include:

(a) solicitation of Planned Producers in all procurements over $10,000 - of items for which they have signed industrial preparedness agreements (but see 1-706 and 1-804.1 as pertain to partial set-asides for small business and labor surplus);

(b) use negotiation procedures under 3-216 to effect an industrial planning requirement; and

(c) when determined necessary by the applicable DoD component, award of individual service contracts may be awarded for accomplishing industrial planning efforts for selected essential military items. These efforts may include but are not limited to the maintenance of Government- owned industrial facilities (real and personal property), including production data packages; and

(d) when it is determined necessary to contract for an Industrial Preparedness Production Planning effort, and an item selected for such planning is being procured, a line item for the planning services and data will be included in the contract schedule. The schedule shall describe in detail the required end items of supply, the specific services, and data by separate line items (see Sec. XX, Part 2).

1-2207 Restricted Purchases for Preservation of Domestic Industrial Base.

1-2207.1 *General Policy.* To insure the continued existence of an industrial mobilization base necessary for national defense and in the public interest, it has been determined to restrict purchases of the following items to United States or United States and Canadian manufactured products. However, if the quantity being acquired is determined to be greater than that required to maintain the U.S. defense mobilization base, offers of qualifying country end products may be accepted for such greater quantities of the items listed here and at 6-1405.

1-2207.2 *Jewel Bearings and Related Items.*

(a) *Definitions.* As used in this paragraph, the following definitions apply.

(1) *Jewel Bearing* means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, which has one or more polished surfaces and the function of which is to provide a supporting surface or low friction contact area for revolving, oscillating or sliding parts in an instrument, mechanism, subassembly or part. A jewel bearing may be either unmounted or mounted into a ring or bushing. Examples of types of jewel bearings are: watch hole—olive, watch hole—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cup, double cups.

(2) *Related Item* means a piece of synthetic corundum (sapphire or ruby) which satisfies the following requirements:

(i) made from material produced by the Verneuil flame fusion process;

(ii) a geometric shape (other than a jewel bearing) up to a maximum of one inch in any dimension;

(iii) requires fabrication techniques to include extremely close tolerances and highly polished surfaces identical to those involved in the manufacture of jewel bearings.

A related item may be unmounted or mounted in a retaining or supporting structure. Basic shapes and terminology commonly used for related items are: window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, notched plate.

(3) *Price List* is the official U.S. Government Price List for jewel bearings and related items produced by the William Langer Plant in Rolla, North Dakota, which is issued periodically by the General Services Administration.

(4) *Plant* means the Government-owned William Langer Plant, Rolla, North Dakota, which is operated through a contractor by the General Services Administration.

(b) *Policy.* Except as otherwise provided below, it has been determined that Defense requirements for jewel bearings must be obtained from the Plant and that related items must be obtained from a domestic source of manufacture including the Plant.

(c) *Procedures.*

(1) All contractor purchases of jewel bearings shall be made from the Plant unless it cannot meet the requirement. All contractor purchases of related items shall be made from a domestic source of manufacture, including the Plant, unless these sources cannot meet the requirement.

(2) In every solicitation and contract in which items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, are specified to be delivered, insert the clause in 7-104.37, except that such clause shall not be used:

(i) in small purchases using small purchase procedures;

(ii) when the procuring contracting officer has positive knowledge that the items being procured do not contain jewel bearings or related items (the contractor's certification, as set forth in (3) below, does not in itself satisfy this requirement);

(iii) in contracts or solicitations for items both procured and used outside the United States, its possessions and Puerto Rico.

(3) In every solicitation for items in the Federal Supply Classes and Groups listed in (d) below, or any subassembly, component or part thereof, require that contractors certify, as an attachment to each proposal or bid, in the form set forth below, that the items to be supplied do or do not include jewel bearings or related items, and that if they are included, that they will be procured in accordance with the clause entitled "*Required Source for Jewel Bearings and Related Items*". Failure to submit this certification shall not render such bid or proposal nonresponsive, but the certification must be obtained from the prospective contractor prior to award. This certification is not required for research and development effort, nor is it required in categories listed in (2) above.

JEWEL BEARING AND RELATED ITEMS CERTIFICATE

This is to certify that jewel bearings and/or related items will / will not (*delete one*) be incorporated in any item covered by this proposal or bid; that if jewel bearings are required, purchase orders will be placed with the William Langer Plant, as provided in the clause entitled "*Required Source for Jewel Bearings and Related Items*"; and that if related items are required, such related items will be procured in the order of priority as follows:

1. From a domestic source, including the Plant, which manufactures such items from the basic hard material, *i.e.*, synthetic ruby or sapphire, or the like.

2. In the event that no domestic source, including the Plant, produces or will produce the required related items, then and only then, will the contractor procure such items from a foreign source.

Estimates of quantity, type, size (including tolerances), of jewel bearings and related items, plus identification of those specific items, components, or subassemblies which require jewel bearings or related items are provided as an attachment to this certificate.

Date of Execution ....
Solicitation No. ....
Name ....
Title ....
Firm ....
Address ....

(End of Certificate)

(4) One copy of each affirmative certification by the contractor and its attachment identifying those specific items, components or subassemblies which contain jewel bearings or related items will be annotated with the contract number, the cognizant CAO, and date of award and forwarded by the PCO to the Plant and the ACO. The Plant will compare certification information with actual orders and notify the ACO having cognizance over the contractor if serious discrepancies exist.

(5) The ACO having cognizance over a particular contractor will conduct reviews of appropriate contractor records when information is received from the Plant of serious discrepancies between certifications and orders, or when the

ACO has reason to believe that there is noncompliance with the clause in 7-104.37.

(6) The Plant may initially decline to accept a contractor's or subcontractor's purchase order due to currently outstanding, excessive and overdue indebtedness to the plant by such customer. The Plant is required to refuse shipments against purchase orders whenever shipments would increase the indebtedness of a customer beyond a credit limit which may have been set by the General Services Administration. Declination by the Plant under these circumstances will not be considered justification for a waiver of the purchase requirement and adjustment in the contract price.

(7) Rejection of orders by the Plant for other reasons shall not provide relief from purchase requirements unless the contracting officer determines that it is in the best interests of the Government. For instance, a rejection for insufficient delivery time could result in a contracting officer's determination that delivery is not critical. Hence, relief would not be granted and the contractor could be directed to resubmit his order to the Plant with a less stringent delivery schedule (*see paragraph (d) of the clause in 7-104.37*).

(d) *Federal Supply Classes and Groups.* Procurement of items in the following Federal Supply Classes and Groups are subject to the prescribed policy and procedures:

FS Class	*Description*
6605	Navigational Instruments
6610	Flight Instruments
6615	Auto Pilot Mechanisms & Airborne Gyro Components
6620	Engine Instruments
6625	Electrical & Electronic Properties Measuring & Testing Instruments
6630	Chemical Analysis Instruments
6635	Physical Properties Testing Equipment
6636	Environmental Chambers & Related Equipment
6640	Laboratory Equipment & Supplies
6645	Time Measuring Instruments
6650	Optical Instruments
6655	Geophysical & Astronomical Instruments
6660	Meteorological Instruments & Apparatus
6665	Hazard Detecting Instruments & Apparatus
6670	Scales and Balances
6675	Drafting, Surveying & Mapping Instruments
6680	Liquid and Gas Flow, Liquid Level, & Mechanical Motion Measuring Instruments
6685	Pressure, Temperature and Humidity Measuring & Controlling Instruments
6695	Combination and Miscellaneous Instruments

FS Groups	*Description*
12	Fire Control Equipment
14	Guided Missiles
15	Aircraft, Airframe Structural Comps.

16	Aircraft Components & Accessories
18	Space Vehicles
23	Motor Vehicles & Cycles
25	Vehicular Equipment Components
42	Fire Fighting, Rescue and Safety Equipment
52	Measuring Tools
58	Communications Equipment
59	Electrical and Electronic Equipment Components
63	Alarm and Signal Systems
65	Medical, Dental and Veterinary Equipment and Supplies
67	Photographic Equipment
69	Training Aids and Devices

1-2207.3 *Miniature and Instrument Ball Bearings.*

(a) *Definitions.* As used in this paragraph:

(1) *Miniature and instrument ball bearings* are all rolling contact ball bearings with a basic outside diameter (exclusive of flange diameters) of 30 millimeters or less, irrespective of material, tolerance, performance or quality characteristics.

(2) *Domestic manufacture* means miniature and instrument ball bearings manufactured in the United States or Canada. When a ball bearing assembly is involved, all components of the bearing must also have been manufactured in the United States or Canada.

(b) *Policy.* It has been determined that Defense requirements for miniature and instrument ball bearings must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of miniature and instrument ball bearings and all procurements of items containing miniature and instrument ball bearings shall include, except as provided in (c) below, a requirement that such ball bearings delivered under the contract be of domestic manufacture only.

(c) *Procedures.*

(1) The clause set forth in 7-104.38 shall be inserted in all contracts except:

- (i) when the procuring contracting officer knows that the item being procured does not contain miniature or instrument ball bearings;
- (ii) when the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured miniature or instrument ball bearings;
- (iii) in small purchases using small purchase procedures, other than in purchase of bearings as the end item;
- (iv) purchases of standard commercial items, other than—
  - (A) those which are intended for use as components or subassemblies of defense equipments or systems (*e.g.*, repair parts) or
  - (B) purchases of bearings as the end item; or
- (v) purchases made overseas for overseas use.

(2) Subsequent to the award of a contract which includes the clause required by (1) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submis-

sion of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic ball bearings, and either:

(i) the production of such subassemblies or end items in the performance of all or a part of the contract using ball bearings of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or

(ii) the delivery schedule under the contract or subcontract is such that use of other than domestic ball bearings or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic bearings.

1-2207.4 *Precision Components for Mechanical Time Devices.*

(a) *Definitions.* As used in this paragraph:

(1) *Precision components for mechanical time devices* are parts which closely relate so that precise control and selection of working production tolerances can be maintained to accomplish the desired function and reliability. In terms of accuracy, such precision components have total tolerances under 0.003 inches, eccentricities less than 0.0015 inches and surface finishes better than 64 rms. Examples of such precision components include: gears, pinions, posts, and plates. Precision components subject to the provisions of this paragraph 1-2207.4 are those which are included in fuzes, boosters, and aircraft clocks in the following Federal Supply Classes:

FS Class	*Description*
1305	Ammunition Through 30mm
1310	Ammunition, Over 30mm up to 75mm
1315	Ammunition, 75mm through 125mm
1320	Ammunition, over 125mm
1325	Bombs
1330	Grenades
1340	Rockets and Rocket Ammunition
1345	Land Mines
1390	Fuzes and Primers
6645	Time Measuring Instruments (aircraft clocks only)

(2) *Domestic manufacture* means precision components for mechanical time devices manufactured in the United States or Canada. When a mechanical timing assembly is involved, all components of the assembly must also have been manufactured in the United States or Canada.

(b) *Policy.* It has been determined that Defense requirements for precision components for mechanical time devices must be procured from domestic manufacturing sources to the maximum extent practicable. Accordingly, all procurements of precision components for mechanical time devices and all procurements of items containing precision components for mechanical time devices shall include, except as provided in (c) below, a requirement that such components delivered under the contract be of domestic manufacture only.

(c) *Procedures.*

(1) All procurements of items in the Federal Supply Classes listed in (a)(1) or any subassembly, component, or part thereof shall provide that precision components for mechanical time devices, in the quantities and of the type and sizes (including tolerances) required to produce the end item being supplied, be of domestic manufacture and incorporated into the items delivered by the contractor and subcontractor at every tier. To accomplish this, the clause set forth in 7-104.46 shall be inserted in all contracts except:

- (i) when the procuring contracting officer knows that the item being procured does not contain precision components for mechanical time devices;
- (ii) when the urgency of the military requirement necessitates delivery of an end item containing other than domestically manufactured precision components for mechanical time devices;
- (iii) in small purchases using small purchase procedures, other than in purchase of precision components for mechanical time devices as the end item;
- (iv) purchases of standard commercial items, other than—
  - (A) those which are intended for use as components or subassemblies or defense equipment or systems (*e.g.*, repair parts) or
  - (B) purchases of precision components for mechanical time devices as the end item; or
- (v) purchases made overseas for overseas use.

(2) Subsequent to the award of a contract which includes the clause required by (1) above, the contracting officer may waive the "use" but not the acquisition requirements of the clause. Such waiver may be granted upon submission of a written request by the contractor if the contractor or subcontractor has on hand subassemblies or end items containing nondomestic precision components for mechanical time devices and either:

- (i) the production of such subassemblies or end items in the performance of all or a part of the contract using precision components for mechanical time devices of domestic manufacture would interfere with economical or normal production scheduling of the military product under contract or with production of another item (military or commercial); or
- (ii) the delivery schedule under the contract or subcontract is such that use of other than domestic precision components for mechanical time devices or subassemblies or parts is necessary.

The contracting officer should grant waivers only to the extent and for the period of time necessary to permit the contractor to acquire and use domestic components.

1-2208 Small Business Concerns. The policy of placing a fair proportion of purchases and contracts with small business concerns (see 1-702) applies in the field of mobilization planning and each Department shall continually study its Industrial Preparedness Production Planning procedures to include small business participation to the maximum practical extent.

1-2209 Priorities, Allocations, and Allotments. In order to maintain an administrative means of promptly mobilizing the nation's economic resources in the event of war or national emergency, and to keep current defense programs on schedule, it is a statutory requirement and national policy to require contractors to use industrial priority ratings and allotment authority to support military procurement (see 1-307).

Part 23—Environmental Protection

1-2300 Scope of Part. This Part sets forth policies and procedures for carrying out the requirements of the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604), The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq. as amended by Public Law 92-500) Executive Order 11738 and the related regulations of the Environmental Protection Agency (EPA) (40 CFR Part 15).

1-2301 Policy.

(a) Executive Order 11738 provides in Section 1 that "It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as the 'Air Act') and the Federal Water Pollution Control Act (hereinafter referred to as the 'Water Act')."

(b) Except as provided in 1-2302.4, purchasing offices shall not enter into, renew, or extend any contract for the procurement of goods, materials, or services or extend Federal financial assistance to a firm proposing to use in the performance thereof a facility which is listed in the EPA List of Violating Facilities, pursuant to 40 CFR Part 15.20 as a violating facility under either the Air Act or the Water Act.

1-2302 Administration and Enforcement.

1-2302.1 *Solicitation Provision*. The provision set forth in 7-2003.71 shall be included in each solicitation except those involving small purchases (Section III, Part 6).

1-2302.2 *Clause*. Unless exempted pursuant to 1-2302.4, the clause in 7-103.29 shall be included in all contracts except those involving small purchases (Section III, Part 6).

1-2302.3 *Compliance Responsibilities*. The primary responsibility for ensuring compliance with Federal, State or local enviornmental control laws and any rules, regulations, standards or guidelines issued pursuant thereto rests with those agencies, such as the Environmental Protection Agency, charged with this responsibility under the various laws concerned. When, however, any condition in any facility being used in the performance of a nonexempt contract, which involves noncompliance with clean air or water standards comes to the attention of the contracting officer in the performance of his regular duties, he shall notify the appropriate Secretary or his designee in accordance with Departmental procedures. The Secretary or his designee shall promptly transmit such reports to the Director, Office of Federal Activities, EPA.

BEST DOCUMENT AVAILABLE

GENERAL PROVISIONS

1-2302.4 *Exemptions*. Except as provided in (c) below, contracts and subcontracts are exempt from the requirements of this Part and 40 CFR Part 15, as follows.

(a) Contracts and subcontracts not exceeding $100,000 are exempt.

(b) Contracts and subcontracts for indefinite quantities are exempt if the contracting officer determines that the amount to be ordered in any year under such contract will not exceed $100,000.

(c) Except for small purchases, the foregoing exemptions shall not apply to a proposed contract under which the facility to be used is listed on the EPA List of Violating Facilities on the basis of a conviction either under the Air Act (40 U.S.C. 1857-8(c)(1)) or the Water Act (33 U.S.C. 1319(c)).

(d) This Part and 40 CFR Part 15 do not apply to the use of facilities located outside the United States. The term "United States," as used herein, includes the States, District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam and American Samoa, and Trust Territories of the Pacific Islands.

(e) Upon a determination that the paramount interest of the United States so requires, the Secretary concerned may exempt from the provisions of this Part any individual or class of contracts or subcontracts, for a period of one year. Prior to granting a class exemption, the Secretary shall consult with the Director, Office of Federal Activities, United States Environmental Protection Agency. The Secretary granting either an individual contract or class exemption shall notify the Director of such exemption as soon after granting the exemption as practicable. Such notification shall describe the purpose of the contract, and indicate the manner in which the paramount interest of the United States required that the exemption be made.

1-2302.5 *Withholding Award*. If, pursuant to the certification in 7-2003.71, the otherwise successful offeror informs the contracting officer that the EPA is considering listing a facility proposed to be used for contract performance, the contracting officer shall promptly notify the Director, Office of Federal Activities, EPA, according to Departmental procedures, that subject firm is under consideration for award. The Director, Office of Federal Activities, EPA, after consultation with the Department involved, may request the contracting officer to delay award for a period not to exceed 15 working days. The 15 working days shall begin on the date the Director is notified by the Department that such award is under consideration. Awards shall be withheld except when such delay is likely to prejudice the Department's programs or otherwise seriously disadvantage the Government. Prompt notice shall be given to the Director in any case where such determination to award has been made.

Part 24 - Recovery of Nonrecurring Costs on Commercial Sales of Defense Products and Technology

1-2400 Scope. This part sets forth policy and procedures established in DOD Directive 2140.2 for the recovery of nonrecurring costs on commercial sales by contractors of products, components, and related technology developed with DOD appropriations or, in special cases, with foreign military sales (FMS) funds. The objective of recovery is to ensure that a customer pays a fair share of the nonrecurring investment cost incurred by the Department of Defense or a foreign government.

1-2401 Policy.

(a) It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to products, and/or a fair price for its contribution to the development of related technology, when the products are sold, and when technology relating to the manufacture of the products is sold or licensed, to a foreign government, international organization, foreign commercial firm, or domestic organization (here referred to as "customers").

(b) Furthermore, in selected cases, it is DOD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under an FMS case when subsequent customers purchase the same specialized feature(s). However, the U.S. Government will not collect this recoupment on behalf of a foreign government beyond 8 years from the date of the acceptance of the original DOD Offer and Acceptance (DD Form 1513) that included the nonrecurring investment.

1-2402 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

(1) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.

(2) Nonrecurring production cost.

(3) RDT&E and nonrecurring production costs for special features under a foreign military sale when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components that individually meet the above thresholds, recoupment will be made on a component when it is sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

1-2403 Procedures.

(a) To assure the recovery of investment in nonrecurring costs and related technology, the clause in 7-104.64 shall be included in all RDT&E and production contracts and subcontracts of $1 million or more. This clause requires the contractor and qualifying subcontractors to pay to the U.S. Government the amounts established by the U.S. Government in the event of the contractor's commercial sale of products, or sale or license of related technology, that meet the thresholds of 1-2402.

(b) If the recoupment charge has been previously established, the contracting office, at the time of each commercial sale, shall determine if there have been significant changes in factors or assumptions used to compute the original charge (for example, changes in identifiable RDT&E cost or the anticipated production run). When significant changes are identified, the contracting office shall submit a request in accordance with departmental procedures to the Office of the Secretary of Defense (see (c) below) for authority to make appropriate changes in nonrecurring cost recoupment charges. Such revised charges shall not be retroactively applied to past sales or to sales that have been consummated by a written contract between the parties.

(c) If the recoupment charge has not been previously established, the contracting office shall expeditiously obtain a charge determination from the office in each DOD component that is responsible for establishing the charge. The Office of the Secretary of Defense must approve certain charges, as follows:

(1) The Director, Defense Security Assistance Agency (DSAA)—nonrecurring cost unit recoupment charges for the sale of major defense equipment (as defined in 7-104.64).

(2) The Under Secretary of Defense for Research and Engineering (USDR&E)—all technology charge determinations.

(d) The amount to be reimbursed to the U.S. Government for the commercial sale of products and components and for the sale or license of technology is set forth in 7-104.64 and in DOD Directive 2140.2

1-2404 Deviations.

(a) A DOD component, a foreign government, or a Defense contractor (vice president or higher) may request deviation, in whole or in part, from assessing the charges prescribed here for a commercial sale when it is considered to be in the best interest of the United States (i) to satisfy a demonstrable right of the manufacturer or the purchaser or (ii) to obtain advantage to the Department of Defense. Consideration may also be given to nonmonetary returns that are advantageous to national security, foreign policy, and the public interest.

(b) Requests for deviation associated with product sales under foreign sales shall be submitted through channels to the Director of the Defense Security Assistance Agency. Requests for deviation for product sale charges to domestic organizations and requests for deviation for technology sales shall be submitted to the Under Secretary of Defense for Research and Engineering. A request for deviation from the otherwise appropriate charges shall contain:

(i) a summary statement of the facts;
(ii) the benefits expected, with justification;
(iii) the specific areas to which the deviation would apply; and
(iv) calculations necessary to ascertain the extent of any monetary involvement and how the calculations are to be handled by either the DOD component or the contractor, as appropriate.

Part 25 - Recovered Material

1-2500 Recovered Material.

1-2500.1 Scope. This part prescribes policies and procedures regarding the use of recovered materials.

1-2500.2 Policy. The policy of the Government is to obtain items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

1-2500.3 General. Basic policy is provided in the Solid Waste Disposal Act (Public Law 89-272, October 20, 1965; 42 U.S.C. 3251 et. seq.) as amended by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, October 21, 1976; 42 U.S.C. 6901 et. seq.), and the Office of Federal Procurement Policy Letter Number 77-1. The legislation requires Executive Agencies responsible for drafting or reviewing specifications to assure that Government specifications and standards (i) do not exclude the use of recovered materials, (ii) do not require the item to be manufactured from virgin materials, and (iii) require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item. It also requires the Administrator, Environmental Protection Agency (EPA), to prepare guidelines setting forth information on the availability, sources, and potential uses of recovered materials and associated items, including solid waste management services and recovered materials to be used as fuel.

1-2500.4 Definition. "Recovered material" means material which has been collected or recovered from solid waste.

1-2500.5 Procedures.

(a) These procedures are applicable to all acquisitions using Government specifications which require incorporation of recovered materials.

(b) Solicitations which incorporate Government specifications requiring utilization of recovered materials shall include the certification in 7-2003.82.

(c) Requirements in Government specifications for use of recovered materials may be waived by the contracting officer only after a determination that the items (i) are not available within a reasonable period of time, (ii) fail to meet performance standards set forth in specifications, or (iii) are available only at unreasonable prices.

SECTION II—PROCUREMENT BY FORMAL ADVERTISING

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SECTION II

PROCUREMENT BY FORMAL ADVERTISING

Part 1—Use of Formal Advertising

2–100 Scope of Section. This Section sets forth (i) the basic requirements for procurement of supplies (including construction) and services by formal advertising, (ii) the information to be contained in solicitations of bids, (iii) methods of soliciting bids, (iv) policies with respect to the submission of bids, and (v) requirements with respect to the opening and evaluation of bids and the awarding of contracts.

2–101 Meaning of Formal Advertising. Formal advertising means procurement by competitive bids and awards as prescribed in this Section, and involves the following basic steps:

(i) *Preparation of the invitation for bids*, describing the requirements of the Government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. (The term "invitation for bids" means the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.);

(ii) *Publicizing the invitation for bids*, through distribution to prospective bidders, posting in public places, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening;

(iii) *Submission of bids by prospective contractors;* and

(iv) *Awarding the contract*, after the bids are publicly opened to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

2–102 Policy.

2–102.1 *General.*

(a) Procurement shall be made by formal advertising pursuant to 10 U.S.C. 2304(a) whenever such method is feasible and practicable under the existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of Section III, Part 2. In accordance with this requirement, procurements shall generally be made by soliciting bids from all qualified sources of supplies or services deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required supplies or services. Current lists of bidders shall be maintained by each purchasing office in accordance with 2–205.

(b) 10 U.S.C. 2306(f) provides that a contractor or subcontractor shall be required to submit cost or pricing data for certain contract modifications, and shall be required to certify that, to the best of his knowledge and belief, the cost or pricing data he submitted was accurate, complete, and current. To insure compliance with this requirement, contracting officers shall follow the instructions set forth in 3-807.3 before agreeing to a price adjustment of a formally advertised contract.

2-102.2 *Classified Procurements*. Formal advertising shall be used for classified procurements *provided*, its use does not violate Departmental security requirements (see 1-201.22).

2-103 General Requirements for Formal Advertising. No award shall be made as a result of formal advertising unless:

(i) bids have been solicited as required by Part 2 of this Section;
(ii) bids have been submitted as required by Part 3 of this Section;
(iii) such business clearances and approvals as are required by Departmental procedures have been obtained; and
(iv) the award is to the responsible bidder (see 1-902) whose bid is responsive to the invitation for bids and is most advantageous to the Government, price and other factors considered, as prescribed in Part 4 of this Section.

2-104 Types of Contracts. Contracts awarded after formal advertising shall be of the firm fixed price type, except that fixed price contracts with economic price adjustment may be used when some flexibility is necessary and feasible (see 3-404.3). A clause as approved in accordance with Departmental procedures may be included except that such approval need not be obtained for the use of the clauses in 7-106.1 and 7-106.2. Any such clause must afford all bidders an equal opportunity to bid in accordance with the procedures in this Section.

2-105 Solicitation for Informational or Planning Purposes. See 1-309.

Part 2—Solicitation of Bids

2-200 Scope of Part. This Part sets forth procedures for the solicitation of bids. Forms used in inviting bids are prescribed in Section XVI, Parts 1 and 4. Invitations for bids shall contain the applicable information described in 2-201 below and any other information required for a particular **acquisition**. All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(i) Standard Forms consisting of general provisions (contract clauses) may be incorporated by reference to the form number, form name, and edition date; *provided*, the instructions for use of the form do not prohibit incorporation of the form by reference; and

(ii) other contract clauses set forth in Section VII may be incorporated by reference if authorized by 7-001.

No other contract clauses shall be incorporated by reference. Pen and ink entries, deletions, or alterations shall not be made in an invitation for bids after it has been reproduced for issue to prospective bidders. If a change is necessary after reproduction of the invitation for bids, the Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used (see 16-101) except that its use for construction contracts is optional (see 16-401.1(ix)).

2-201 Preparation of Invitation for Bids.

(a) *Supply and Services Contracts*. For supply and services contracts, invitations for bids (Standard Form 33) shall contain the following information if applicable to the **acquisition** involved. For construction contracts, see 2-201(b).

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THE FOLLOWING CHECKED SECTIONS ARE CONTAINED IN THE CONTRACT

(X)	SEC		PAGE	(X)	SEC		PAGE
		PART I—THE SCHEDULE				PART III—LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS	
	A	Contract Form					
	B	Supplies/Services and Prices					
	C	Description/Specifications			J	List of Documents, Exhibits, and Other Attachments	
	D	Packaging and Marking				PART IV—GENERAL INSTRUCTIONS	
	E	Inspection and Acceptance			K	Representations, Certifications, & Other Statements of Offeror	
	F	Deliveries or Performance					
	G	Contract Administration Data			L	Instructions and Conditions, and Notices to Offerors	
	H	Special Provisions					
		PART II—GENERAL PROVISIONS					
	I	General Provisions			M	Evaluation Factors for Award	

Acquisition of (i) ship construction, including shipbuilding, conversion, and repair; (ii) supplies or services for which special forms or formats are prescribed by this Regulation, e.g., those prescribed by Part 5 of Section XVI; and (iii) subsistence must contain all applicable items, but such items need not be set forth in the Uniform Contract Format. The following subparagraphs are grouped to conform to the Uniform Contract Format. All items of information shall be set forth in the appropriate sections.

Part I—The Schedule

SECTION A - Contract Form.

(i) Standard Form 33, Part 1 (Solicitation, Offer, and Award and Acknowledgement of Amendments). Instructions for filling out this form are in 16-104.1 and 16-104.2;

SECTION B - Supplies/Services and Prices.

(i) a brief description of the contract line items being purchased (i.e., item numbers, NSN/part numbers, nouns, and quantities);

(ii) any provision for extent of quantity variation (see 1-325);

(iii) except under the circumstances set forth in 9-505; DD Form 1423 (Contract Data Requirements List); one or more line items or subline items of data in this Section B referring to DD Form 1423 (see 16-815);

(iv) information normally contained in Sections C, D, E, and F relating to specific line items may be included in Section B with the appropriate line item.

SECTION C - Description/Specifications.

(i) when the NSN/part number and noun or brief description is not in sufficient detail to permit full and free competition, a sufficient description (including any necessary specifications) of the supplies and services to be furnished shall be provided in this Section C. Reference to specifications shall include identification of all amendments or revisions thereof applicable to the acquisition and dates of both the specifications and the revisions (see Section 1, Part 12); and

(ii) in accordance with 1-1206.3, the statement in 1-1206.3(a) for a "brand name or equal" item.

SECTION D - Packaging and Marking.
(i) packaging and marking requirements, if any (see 1-1204).

SECTION E - Inspection and Acceptance.
(i) place of inspection and place of acceptance, and any other instructions required to supplement the requirements of Section XIV, Part 3.

SECTION F - Deliveries or Performance.
(i) the time of delivery or performance (see 1-305);
(ii) place and method of delivery (see Section XIX); and
(iii) when MILSTAMP procedures apply to shipments of supplies, a provision setting forth the obligations of the contractor under such procedures (see 19-101).

SECTION G - Contract Administration Data.
(i) accounting and appropriation data not included on Standard Form 33; and
(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

SECTION H - Special Provisions.
(i) if the contract is to include option provisions, a clear statement of such provisions (see 1-1506);
(ii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror. (This may be placed elsewhere as long as the notice is adjacent to the limitation as to option price.)
(iii) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;
(iv) if the contract will involve multiyear acquisition, the provisions required by 1-322.2(a) or (f);
(v) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);
(vi) in accordance with 1-1208, the Government Surplus Clause in 7-104.49;

(vii) in accordance with 1-1208, the New Material Clause in 7-103.48;

(viii) any special provisions relating to the Government's providing Government production and research property for the performance of the contract (see Section XIII, Part 3);

(ix) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause prescribed by 7-104.79, a specific list of any of the mandatory requirements of DOD Manual 4145.26-M that are being waived;

(x) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;

(xi) when clause 7-104.62 is included in the contract and Appendix I, Table 2, does not list addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall include, referencing the line item as necessary, the addresses of the status control activity/inventory manager and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR).

(xii) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.

(xiii) if the contract is for supplies purchased for resale, include the clause in 7-104.88;

(xiv) if international air transportation of personnel and cargo is possible during the performance of the contract, include the clause in 7-104.95;

(xv) if the contract is for goods or services for MAPIMET, or FMS, include the clause in 7-104.97;

(xvi) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2;

(xvii) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202; and

(xviii) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340.

(xix) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-103.10, 7-104.3, 7-104.32, and 7-104.106, as prescribed by 6-104.5 and 6-803.1(e).

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as required by law and by this Regulation;

(ii) such additional general provisions as may be applicable to the acquisition; and

(iii) such alterations to contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the invitation-for-bids package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the invitation proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Bidder.

(i) Standard Form 33, Part 2 (Representations and Certifications);

(ii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid the provision in 7-2003.12 concerning his affiliation with other concerns shall be included in this Section K. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(iii) the clause in 7-2003.13 that provides for a preference for labor surplus area concerns shall be included in invitations for bids that do not involve set-asides for labor surplus area concerns;

(iv) when needed for the purpose of bid evaluation, preaward surveys, or inspection, a requirement that all bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. When it is reasonably anticipated that producing facilities will be used in the performance of the contracts, or when Government requires the information, bidders will be required to state (A) the full address of principal producing facilities (if designation of address is not feasible, a full explanation will be required), and (B) names and addresses of owner and operator if other than bidder;

(v) if the contract is for the Military Assistance Program, include the certificate in 7-2003.50;

(vi) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, include the certificate in 7-2003.47;

(vii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, include the provisions in 7-2003.14(b)(1) and (2);

(viii) any requirement for prior testing and qualification of a product, when the item to be acquired is on a qualified products list (see Section 1, Part 11);

(ix) when the contract is for the acquisition of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(x) when shipping weights and dimensions are required to evaluate offers as to transportation costs (see 19-210), a provision substantially as in 7-2003.16 shall be included in the solicitation, except that the paragraph relating to the Government's estimated weights and dimensions may be omitted when such estimates cannot reasonably be developed and the file is documented accordingly, prior to the issuance of the solicitation. Solicitations omitting the paragraph relating to the Government's estimated weights and dimensions shall state that the failure to furnish guaranteed shipping weights and dimensions will render offers nonresponsive, unless the contracting offer determines that the shipping weights and dimensions would clearly not affect the standing of the bids. To aid in computing a reduction when the contractor exceeds the guaranteed maximum(s), the award document will show the weight(s) and dimensions used in the evaluation;

(xi) when a solicitation may result in an f.o.b. origin contract and the item to be purchased is new to the supply system, nonstandard, or such a modification of a previously shipped item that a different freight classification may apply (e.g., contains new materials, ingredients, changed weight, cube, configuration, etc.,) (see 19-202(b)), insert the provision in 7-2003.17;

(xii) when bids are to be solicited f.o.b. origin only and when it is desired that a bidder be permitted to offer commercial transit credits (see 19-206(b)), insert the provision in 7-2003.18;

(xiii) when the contract is to include the clause in 7-104.70 and when it is believed that a prospective contractor is likely to include in his f.o.b. origin price a contingent amount to compensate for what may be for him an extremely unfavorable routing condition, which the Government has the option to specify at the time of shipment (see 19-208.2(b)), insert a provision substantially as in 7-2003.19;

(xiv) when supplies are to be delivered outside the United States and more than one U.S. port of loading meets the eligibility criteria applicable to the nature and quantity of the supplies for movement to the overseas destination (see 19-208.1(b) and 19-213.1(d)), insert the provision in 7-2003.20;

(xv) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), insert the clause in 7-2003.21;

(xvi) the Clean Air and Water Certification in 7-2003.71;

(xvii) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xviii) insert the Women-Owned Business representation in 7-2003.80;

(xix) insert the Percent Foreign Content representation in 7-2003.81;

(xx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82; and

(xxi) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

BEST DOCUMENT AVAILABLE

SECTION L - Instructions and Conditions, and Notices to Bidders.

(i) Standard Form 33A, Solicitation Instructions and Conditions; alternatively, SF 33A may be incorporated by reference to the form name, number, and edition date;

(ii) the Late Bids provision in 7-2002.2 (this replaces paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) permission, if any, to submit telegraphic bids (see 2-202.2);

(v) permission, if any, to submit alternate bids, including alternate materials or designs (see 1-1207);

(vi) if no award will be made for less than the full quantities advertised, a statement to that effect;

(vii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(viii) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1); if a bid bond or other form of bid guarantee is required, the solicitation shall include the provisions required by 10-102.4;

(ix) directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference (see 1-1203);

(x) any applicable requirements for samples or descriptive literature (see 2-2-2.4 and 2-202.5);

(xi) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Review set forth therein;

(xii) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xiii) in accordance with 6-1104, the U.S.-owned foreign currency provision set forth in 7-2003.62;

(xiv) when provision for progress payments is to be included in the invitation for bids, the notice in E-504.4 and, if appropriate, the notice in E-504.3;

(xv) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xvi) invitations for bid that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when considered necessary to stipulate a minimum acceptance period:

(A) insert the stipulated number of calendar days in the "Offer" portion of the SF 33, strike the phrase "(60 calendar days unless a different period is inserted by the offeror)" and add the following at the end of the statement: "(See Section L (insert paragraph number))."

(B) include in Section L of the solicitation a provision substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Offerors allowing less than the number of calendar days specified in the "Offer" portion of SF 33 for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xviii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xix) any applicable notices of small business or labor surplus area set-asides (see 1-706.6 and 1-804.2);

(xx) the applicable small business size standard and product classification (see 1-701 and 1-703);

(xxi) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3) (see, for example, 13-202(b));

(xxii) the provision in 7-2003.10 when a "brand name or equal" item is being acquired;

(xxiii) in unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being acquired, or for some other special reason, a statement of such qualifications;

(xxiv) if the solicitation is to include an Industrial Preparedness Production Planning line item, the provision in 7-2003.69 will be included (see 1-2206);

(xxv) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;

(xxvi) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(xxvii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;

(xxviii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the provision in 7-2003.89(a);

(xxix) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;

(xxx) Reserved; and

(xxxi) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

SECTION M - Evaluation Factors for Award.

(i) a statement of the exact basis upon which bids will be evaluated and award made, to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provisions for economic price adjustment as factors for evaluation.

(The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(ii) if the solicitation contains an economic price adjustment clause, the provision in 7-2003.23(a);

(iii) when the contracting officer determines that it is necessary to consider the advantages or disadvantages to the Government that might result from making more than one award (multiple awards) (see 2-407.5(iii)), the provision in 7-2003.23(b);

(iv) discount provision (see 2-407.3);

(v) when bids (or proposals) are to be solicited f.o.b. origin only and when requirement exists for transit arrangements at transit point(s) in the United States (excluding Alaska and Hawaii) (see 19-206(a)), the provision in 7-2003.23(c);

(vi) to establish the means the Government will use in f.o.b. origin solicitations in applying transportation costs for evaluation (see 19-208.2(c)), the provision in 7-2003.23(d) (which may be modified to accommodate other methods of transportation);

(vii) when the exact destination is not known (see 19-208.4(a)), the provision in 7-2003.24(a);

(viii) when the exact destination is not known (see 19-208.4(a)), or when f.o.b. origin contracts may result (see 19-209), the provision in 7-2003.24(b);

(ix) when the supplies may be purchased f.o.b. origin (see 19-212), the provision in 7-2003.24(c);

(x) when both f.o.b. origin and f.o.b. destination bids are desired (see 19-104.2(b)), the provision in 7-2003.24(d);

(xi) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services, that required by 22-502 for mortuary services, that required by 22-600.3 and 22-600.4 for the preparation of personal property for shipment or storage and the performance of intra-area movement);

(xii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(xiii) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII, Part 5, particularly 13-502);

(xiv) any applicable information pertaining to evaluation and award where first article approval is involved (see 1-1903);

(xv) if the invitation is for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48; and

(xvi) when it is determined that transportation costs are not to be evaluated because it is impracticable to do so, the provision in 7-2003.70.

(b) *Construction Contracts*. For construction contracts, the invitation for bids shall contain the following information if applicable to the procurement involved (see also 16-401.2).

(i) invitation number;
(ii) name and address of issuing activity;
(iii) date of issuance;
(iv) date, hour, and place of opening. See 2-202.1 concerning bidding time. Prevailing local time shall be used. Timing by the 24-hour clock shall not be used except where customary in the industry. The exact location of the bid depository, including the room and building numbers, and a statement that handcarried bids must be deposited therein;
(v) number of pages;
(vi) requisition or other purchase authority and appropriation and accounting data;
(vii) a brief description of the work to be performed. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the procurement and dates of both the specifications and the revisions (see 1-1201). Such description shall comply with Section I, Part 12, relating to specifications;
(viii) the time of performance (see 18-105);
(ix) permission, if any, to submit telegraphic bids (see 2-202.2);
(x) permission, if any, to submit alternate bids, including alternate materials or designs (see 1-1207);
(xi) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1; 16-401.2(c)(iii)(1); and 18-801). If a bid bond or other form of bid guarantee is required, follow the instructions in 10-102.4;
(xii) when considered necessary to stipulate a minimum acceptance period:
  (A) Insert the stipulated number of calendar days* in the blank provided in the 'Bid' portion of SF 19, strike the phrase '(30 days unless a different period is inserted); and add the following at the end of the statement: '(See paragraph ....**........ of the invitation for bids)'. When SF 21 is used, insert the stipulated number of calendar days* in the blank provided on the reverse of the form, strike the phrase '(........ calendar days unless a different period be inserted by the bidder)' and add the following

at the end of the statement: '(See paragraph ....**........ of the invitation for bids)'.

* *A 30-day bid acceptance period is normal, but may be less, and in unusual circumstances a period of 60 days may be specified.*

** *Identify specific paragraph in the invitation for bids which includes the provision in (B) below.*

(B) Include a provision in the invitation for bids substantially as follows:

MINIMUM ACCEPTANCE PERIOD (1975 MAR)

Bids allowing less than the number of calendar days specified in the 'Bid' portion of SF 19 (or on the reverse of SF 21 as applicable) for acceptance by the Government will be rejected as nonresponsive.

(End of provision)

(xiii) any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments (see Appendix E, E-504), patent rights (see 18-908), liquidated damages, profit limitations, or Buy American Act (see 7-2003.65);

(xiv) such general contract provisions or conditions as are required by law or by this Regulation;

(xv) any applicable wage determinations of the Secretary of Labor;

(xvi) a statement of the exact basis upon which bids will be evaluated and award made; to include any Government costs or expenditures (other than bid prices) to be added or deducted, or any provision for economic price adjustment as factors for evaluation (see 18-201). (The amount of any royalty payable under the royalty sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.) See also 1-304.3.

(xvii) when considered necessary by the contracting officer to prevent practices prejudicial to fair and open competition, such as improper kinds of multiple bidding, a requirement that each bidder submit with his bid an affidavit concerning his affiliation with other concerns. To accomplish the foregoing, the provision in 7-2003.12 shall be included in the invitation for bids. Failure to furnish the affidavit with the bid shall be treated as a minor informality or irregularity (see 2-405);

(xviii) directions for obtaining copies of any documents, such as plans, drawings, and specifications, as well as information as to charge, if any, to be made for drawings and specifications (see 16-401.2(c)(iii) (2)(B));

(xix) in accordance with 6-1104, the United States owned foreign currency provisions in 7-2003.62;

(xx) information regarding bidding material which shall include Instructions to Bidders, the Bid Form, the Contract Form, the General Provisions, any conditions, the specifications and drawings (see 1-1203);

(xxi) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318),

(xxii) a statement that prospective bidders may submit inquiries by writing or calling (*collect calls not accepted*) Mr. (*insert name and address, telephone area code, number, and extension*);

(xxiii) a statement that prospective bidders should indicate in the bid the address to which payment should be mailed, if such address is different from that shown for the bidder;

(xxiv) invitations for bids which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xxv) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

(A) on the face page or cover sheet of the solicitation, these notices:

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);

(xxvi) the applicable small business size standard (see 1-701 and 1-703);

(xxvii) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;

(xxviii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xxix) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;

(xxx) except when a waiver has been granted (see 18-110) prior to solicitation, if the solicitation contains one or more items subject to statutory cost limitation, the Cost Limitation provision in 7-2003.27;

(xxxi) if a construction contract is estimated to exceed $1,000,000 or in appropriate contracts under $1,000,000, the clause set forth in 7-603.15 and a statement that the successful bidder must furnish the contracting officer within (number) days after award the items of work which he will perform with his own forces and the estimated cost of those items unless he has submitted those items with his bid;

(xxxii) the estimated magnitude of the proposed construction indicated by 18-109;

(xxxiii) special provisions relating to the Buy American Act (see Section XVIII, Part 5);

(xxxiv) statement of arrangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xxxv) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xxxvi) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any utilities are adequate for the needs of both the Government and the contractor. Such information shall specify any special conditions of use to be imposed on the contractor and shall also specify any utilities to be furnished without charge; utilities shall be furnished without charge when the contracting officer determines that this is advantageous to the Government, as when the administrative costs incident to maintaining records and collecting payments will approximate the cost of the utility services to be furnished. Such information may also include any applicable rates to be imposed under the Availability and Use of Utility Services clause (see 7-603.30);

(xxxvii) information concerning pre-bid conference;

(xxxviii) if it is necessary to advertise before receipt of a wage determination, a notice that the schedule of minimum wage rates to be paid under the contract will be published as an amendment to the specifications;

(xxxix) a provision as follows—

> MODIFICATIONS PRIOR TO DATE SET FOR OPENING BIDS
>
> The right is reserved, as the interest of the Government may require, to revise or amend the specifications or drawings or both prior to the date set for opening bids. Such revisions and amendments, if any, will be announced by an amendment or amendments to this Invitation for Bids. If the revisions and amendments are of a nature which require material changes in quantities, or prices bid, or both, the date set for opening bids may be postponed by such number of days as in the opinion of the issuing officer will enable bidders to revise their bids. In such cases, the amendment will include an announcement of the new date for opening bids.

(xl) a provision as follows—

> GOVERNMENT'S PRIVILEGE IN MAKING AWARDS
>
> The Government further reserves the right to make award of any or all schedules of any bid, unless the bidder qualifies such bid by specific limitation; also to make award to the bidder whose aggregate bid on any combination of bid schedules is low. For the purpose of this Invitation for Bids, the word "item" as used in paragraph 10(c) of Standard Form 22 shall be considered to mean "schedule".

(xli) if it appears that funds available for a project may be insufficient for all the desired features of construction, the contracting officer may provide in the invitation for a first or base bid item covering the work generally as specified and for one or more additive or deductive bid items which progressively add or omit specified features of the work in a stated order of priority. In such case, the invitation shall include a provision substantially as in 7-2003.28, and the low bidder and the bid items to be awarded shall be determined as therein provided. The contracting officer, prior to the opening of bids, shall determine and record in the contract file the amount of funds available for the project. The amount so recorded shall be controlling for determining the low bidder but may be increased for determining the bid items to be awarded to him *provided* that award on such combination of bid items does not exceed the amount offered by any other conforming responsible bidder for the same combination of bid items;

(xlii) a statement on the face of the invitation as follows—

BIDS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS INVITATION FOR BIDS (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN BIDS IS PRESCRIBED IN 18 U.S.C. 1001.

(xliii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (this may be placed elsewhere so long as the notice is adjacent to the limitation as to option price);

(xliv) Reserved;

(xlv) if the contract is to contain the *Safety Precautions for Ammunition and Explosives* clause in 7-104.79, see 2-201(a)Sec.H(ix);

(xlvi) when Standard Form 19 is used, a statement that if the bid exceeds $10,000, the contract also will contain the clauses in—

7-103.10(a) (*Federal, State, and Local Taxes*),
7-103.18 (*Equal Opportunity*) unless exempted by 12-805,
7-104.14(a) (*Utilization of Small Business Concerns*), and
7-104.15 (*Examination of Records by Comptroller General*);

(xlvii) Reserved;

(xlviii) the *Late Bids* provision in 7-2002.2 (this replaces paragraphs 7 and 8 of SF 22);

(xlix) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(l) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(li) the *Clean Air and Water Certification* in 7-2003.71;

(lii) Reserved;

(liii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(liv) insert the Small Disadvantaged Business concern representation in 7-2003.74;

(lv) if the contract is for the procurement of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lvi) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lvii) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340;
(lviii) insert the Women-Owned Business representation in 7-2003.80;
(lix) insert the Percent Foreign Content representation in 7-2003.81;
(lx) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82;
(lxi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6;
(lxii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(a);
(lxiii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;
(lxiv) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

(c) *Master Solicitation.* A master solicitation is a document containing the text of special provisions which have been identified as being essential for carrying out the peculiar needs of a specific commodity assignment to a single contracting activity within DoD. The document is pre-positioned with potential sources who are requested to retain them for continued and repetitive use. The purpose of this technique is to simplify solicitation and award documents, to reduce the size of solicitations and awards, and concurrently to achieve time and dollar savings for both the Government and industry. The master solicitation technique involves two separate phases, the issuance of the master solicitation and the issuance of the individual solicitation/award. In addition, use of this technique to meet such peculiar requirements shall be subject to the following criteria:

(1) The master solicitation shall not be used unless repetitive purchases are anticipated.

(2) The master solicitation shall not include nonessential or infrequently used provisions.

(3) The master solicitation shall consist primarily of those locally developed provisions relating to instructions and procedures requiring repetitive use that cannot otherwise be avoided through use of DAR clauses. The master solicitation shall not include Section VII clauses; however, where the acquisition requires performance outside the U.S., Section VII clauses may be included in the master solicitation.

(4) Copies of a master solicitation shall be made available upon request.

(5) There shall be no interim changes, revisions nor amendments to the master solicitation itself. The only approved method of revising the master solicitation shall be by reissuing the entire master solicitation.

(6) Copies of contracts furnished to the contract administration activity must be complete and shall include a copy of the master solicitation unless prior arrangements have been made.

(7) The use of this technique shall be limited to those situations where it is clearly demonstrable that a substantial reduction of paperwork and simplification of the contracting process will result. Approval by the Head of the Contracting Activity is required.

2-202 Miscellaneous Rules for Solicitation of Bids.

2-202.1 *Bidding Time.*

(a) Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to allow bidders an adequate opportunity to prepare and submit their bids. As a general rule, bidding time shall be no less than 30 calendar days. For potential sources in participating countries, see 6-1403.1(a); for sources in FMS/offset arrangement countries, see 6-1310.3(b); and for sources in defense cooperation countries, see 6-1502.1.

(b) This rule need not be observed in special circumstances; for example, where the contracting officer has valid reason to determine that bidders in the second step of two-step formal advertising can prepare and submit their bids in less than 30 calendar days, or where the urgency for the supplies or services does not permit such delay. When the contracting office is located in the United States and a prospective bidder is located at a foreign address, the mailing time associated with international air mail (see 2-203.1) shall be considered when establishing the bid opening date. For items on Qualified Products Lists, see 1-1107.1; for construction contracts, see 18-202(b); and for brand name or equal items, see 1-1206.2.

2-202.2 *Telegraphic Bids.* As a general rule, telegraphic bids will not be authorized. However, when, in the judgment of the contracting officer, the date for the opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized, the schedule of the invitation for bids will contain the provision in 7-2003.29.

2-202.3 *Bid Envelopes.* Postage or envelopes bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, Optional Form 17, "Sealed Bid Label", obtainable from the General Services Administration, may be furnished with each bid set to provide the bidder with a means of specifically identifying his bid.

2-202.4 *Bid Samples.*

(a) *Definition.* The term "*bid sample*" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. Such samples will be used only for the purpose of determining the responsiveness of the bid and will not be considered on the issue of a bidder's ability to produce the required items.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure **acquisition** of an acceptable product. It may be appropriate to require bid samples, for example, where the **acquisition** is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specification. Where the use of bid samples is justified, the sample may be examined for any required characteristic, whether or not such characteristic may be adequately described in the specification. Invitations shall list all of the characteristics for which the sample will be examined and bids will be rejected as nonresponsive if the sample fails to conform to each of the listed characteristics. However, where more than a minor portion of the characteristics of the product cannot be adequately described in the specification, the product should be procured by two-step formal advertising or negotiation, as appropriate.

(c) *Justification*. The reasons why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of Invitation for Bids*. When bid samples are required, the invitation for bids shall (i) state the number and if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; (ii) list all the characteristics for which the samples will be examined; and (iii) include a provision in accordance with (e) below. Where samples are not considered necessary and a waiver of the sample requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, samples will not be required.

(e) *Invitation for Bids Provision*. When bid samples are required, the provision in 7-2003.30(a) shall be included in the invitation for bids.

(f) *Waiver of Requirement for Bid Samples*. The provision prescribed in 7-2003.30(a) may be modified to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by the purchasing activity and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids so that further evaluation or testing would not add to the Government's knowledge of the acceptability of the product. When provision is to be made for such waiver, the provision in 7-2003.30(b) shall be included in the invitation for bids.

(g) *Unsolicited Samples*. If bid samples are not required by the invitation for bids, but samples are furnished with a bid, they will not be considered as qualifying the bid and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(h) *Handling of Bid Samples*. Samples, if not destroyed in testing, shall be returned to bidders at their request and expense, unless otherwise specified in the invitation for bids. See paragraph 5 of the Solicitation Instructions and Conditions (Standard Form 33-A). When samples are no longer required, disposition instructions shall be requested from the bidder and the samples disposed of accordingly. If disposition instructions are not received within 30 days, samples ordinarily will be returned collect to the address from which received; however, small items may be returned by mail, postage prepaid. Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished by the contracting officer. Samples that are consumed or the usefulness of which is otherwise impaired by tests conducted to determine compliance with specifications will be disposed of as scrap unless the supplier requests their return.

2-202.5 *Descriptive Literature.*

(a) *Definition.* As used in this paragraph 2-202.5, the term "*descriptive literature*" means information, such as cuts, illustrations, drawings and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature as a part of their bids unless the purchasing activity deems that such literature is needed to enable it to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the contract file, except where such submission is required by the formal specifications (Federal, Military, or other) applicable to the procurement.

(d) *Requirements of Invitation for Bids.*

(1) When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. Where descriptive literature is not considered necessary and a waiver of the literature requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, descriptive literature will not be required.

(2) Except as provided in (3) below, if bidders are to furnish descriptive literature as a part of their bids, a provision substantially as in 7-2003.31(a) shall be included in the invitation for bids.

(3) When brand name or equal purchase descriptions are used, the requirements of this 2-202.5 are met by inserting in the invitation for bids the brand names provision in 7-2003.10.

(e) *Waiver of Requirements for Descriptive Literature.* The provision prescribed in 7-2003.31(a) may be modified to provide that the requirements for furnishing descriptive literature may be waived as to a particular bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product previously or currently being furnished to the purchasing activity and (ii) it is determined by the contracting officer that such product complies with the specification requirements of the current invitation for bids. (See 7-2003.31(b)).

(f) *Unsolicited Descriptive Literature*. If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See 2-404.4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

2-203 Methods of Soliciting Bids.

2-203.1 *Mailing or Delivery to Prospective Bidders*. Invitations for bids (or pre-invitation notices) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition and, in accordance with 1-1002.1, may be provided to others having a legitimate interest to the extent invitations for bids are available. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by international air mail if security classification permits. For bidding time, see 2-202.1.

2-203.2 *Dissemination of Information Concerning Invitations for Bids*. For procedures concerning displaying of bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsizing, see 1-1002.4, 1-1002.5, 1-1002.6, and 1-1003.

2-204 Office of Permanent Record. Each purchasing activity is the office of permanent record for every invitation for bids issued and distributed by it and for each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

2-205 Bidders Mailing Lists.

2-205.1 *Establishment of Lists.*

(a) Bidders mailing lists shall be established by purchasing activities to insure access to adequate sources of supplies and services except where the requirements of the purchasing office can be obtained within the local trade area through utilization of the simplified small purchases procedures (Section III, Part 6), or are nonrecurring.

(b) All eligible and qualified suppliers who have submitted bidders mailing list applications, or whom the purchasing activity considers capable of filling the requirements of a particular procurement shall be placed on the appropriate bidders mailing list. Planned producers under the Industrial Readiness Planning Program shall be included on the bidders mailing list for their planned items. See also 1-1006(b). When new prospective suppliers are placed on the bidders mailing list, they shall be notified. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Those not meeting the criteria for placement on the bidders mailing list also shall be notified accordingly.

(c) Business firms listed on Bidders Mailing List (BML) will be identified by size as per 1-701. The size status should be established prior to initially listing a business firm on a purchasing activity's BML. Minority firm designation will be shown on the BML whenever noted on the SF 129 submitted by a particular firm.

(d) Bidders Mailing list Application (Standard Form 129) shall be used for obtaining information needed, as prescribed in 16-810, in the establishment and maintenance of bidders mailing lists. Supplemental information, where required, may be obtained by using DD Form 558-1 (Bidders Mailing List Application Supplement).

(e) For special instructions relative to the establishment of a Research and Development Bidders Mailing List, see ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists."

2-205.2 *Removal of Names from Bidders Mailing Lists.*

(a) The name of each concern failing to respond to an invitation for bids, or pre-invitation notice (see 2-205.6) may be removed from the bidders mailing list without notice to the concern but only for the item or items involved in such invitation or notice. Where a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interest of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitation for bids or pre-invitation notices.

(b) The names of concerns which have been (i) debarred from entering into Government contracts or (ii) otherwise determined to be ineligible to receive an award of a Government contract, including ineligibility because of suspension or other disqualifications, shall be removed from the bidders mailing lists to the extent required by such debarment or other determination of ineligibility.

2-205.3 *Reinstatement on Bidders Mailing Lists.* Concerns which have been removed from bidders mailing lists may be reinstated upon request or new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or ineligibility.

2-205.4 *Excessively Long Bidders Mailing Lists.*

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the numbers of firms to be solicited may be reduced by any method consistent with the foregoing, including those described in (b) below and 2-205.6. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of bid sets upon request made by concerns not invited to bid.

(b) *Rotation of Lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies rotation. Consideration also should be given as to whether time permits utilization of the pre-invitation notice (see 2-205.6). In rotating a list, the interest of small business (see 1-702(b)(v)) and the existence of labor surplus areas (see 1-803(a)(v)) shall be considered. Whenever the rotation method is employed, the successful bidder on the previous procurement for the same or similar items and those prospective suppliers who have been added to the bidders mailing list since the last procurement shall be solicited, in addition to those bidders comprising that segment of the list selected for use in a particular procurement, except where such action would be precluded by use of the small business total set-aside procedures.

2-205.5 *Release of Bidders Mailing Lists.*

(a) The comprehensive bidders mailing list established by purchasing offices under this section shall be made available to the public upon written request made in accordance with 1-329. When it is necessary to dispatch identical information by means of electrical transmission to prospective bidders or offerors, the electrically transmitted message, when released for communications handling, shall be marked "BOOK MESSAGE—TRANSMIT A SINGLE ADDRESS MESSAGE" to preclude prospective bidders or offerors knowing the names of others solicited. However, information as to sources solicited may be made available to other Government agencies, at their specific request, and upon the condition that the list will not be made available for inspection prior to award to anyone outside the Government.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders and other having a bona fide interest in such information, will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications.

2-205.6 *Pre-Invitation Notices.* In lieu of initially forwarding complete bid sets, the purchasing activity may send pre-invitation notices to concerns on the mailing list. The notice shall:

(i) specify the date by which bidders should return the notice in order to receive a complete bid set;

(ii) describe the requirement, or include the schedule of the invitation for bids, so as to furnish an item description and a condensation of other essential information providing concerns with an intelligible basis for judging whether they have an interest in the acquisition; and

(iii) expressly notify concerns that if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved.

Drawings, plans, and specifications normally will not be furnished with the pre-invitation notice. The return date in the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable to major contracting activities where lengthy invitations for bids and long bidders mailing lists are common.

2-206 Small Business and Labor Surplus Area Set-Asides. See Section I, Parts 7 and 8.

2-207 Pre-Bid Conference. The pre-bid conference is a procedure which may be used, generally in complex acquisitions, as a means of briefing prospective bidders (e.g., acquisitions that were formerly negotiated are to be formally advertised) and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. Since the invitation for bids itself must be sufficiently clear and complete to insure that bidders are bidding on the same basis, the need for this procedure should be rare. The pre-bid conference shall never be used as a substitute for amending a defective or ambiguous invitation, and may be used only when approved at a level higher than the contracting officer. It shall be conducted in accordance with the procedure prescribed in 3-504. All interested parties, including representatives from qualifying country sources, shall be invited. (See 6-1403.1(a)(8), 6-1310.3(b), and 6-1502.1.)

2-208 Amendment of Invitation for Bids.

(a) If, after issuance of an invitation for bids but before the time for bid opening, it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids, using Standard Form 30 (see 16-101), whether or not a pre-bid conference is held. The amendment shall be sent to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before issuing an amendment to an invitation for bids, the period of time remaining until bid opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, whether or not a pre-bid conference is held, if such information is necessary to the bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

2-209 Cancellation of Invitations Before Opening. Cancellation of an invitation for bids usually involves the loss of time, effort, and money, spent by Government and bidders in carrying the procurement process up to the point of cancellation. Invitations for bids should not be canceled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the supplies or services or where amendments to the invitation would be of such magnitude that a new invitation is desirable. Where an invitation is canceled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued. The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being canceled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of material or services involved. The cancellation shall be recorded in accordance with 2-403.

2-210 Qualified Products. See Section I, Part 11.

2-211 Release of Procurement Information.

(a) *Prior to Synopsis or Solicitation.* Information concerning proposed procurements shall not be released outside the Government prior to solicitation except when pre-invitation notices have been used in accordance with 2-205.6 or 18-205(c), or long-range procurement estimates have been issued in accordance with 1-1007. Within the Government, such information shall be restricted to those having a legitimate interest therein. Such information shall be released to all potential contractors at the same time, as nearly as possible, so that one potential contractor shall not be given unfair advantage over another.

(b) *After Synopsis or Solicitation.* Discussions with prospective contractors regarding a potential procurement and the transmission of technical or other information shall be conducted only by the contracting officer or his superiors having contractual authority or by others specifically authorized. Such personnel shall not furnish any information to a potential supplier which alone or together with other information may afford him an advantage over others. However, general information which would not be prejudicial to other bidders may be furnished upon request, *e.g.*, explanation of a particular contract clause or a particular condition of the schedule in the invitation for bids. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be furnished in a timely manner to all to whom the solicitation has been furnished. See 2-208.

Part 3—Submission of Bids

2-301 Responsiveness of Bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses his own bid form or a letter to submit a bid, the bid may be considered only if (i) the bidder accepts all the terms and conditions of the invitation, and (ii) award on the bid would result in a binding contract the terms and conditions of which do not vary from the terms and conditions of the invitation.

2-302 Time of Bid Submission. Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening of bids.

2-303 Late Bids, Modifications of Bids or Withdrawal of Bids.

2-303.1 *General.* Bids received in the office designated in the Invitation for Bids after the exact time set for opening are "late bids." A late bid, modification of bid, or withdrawal of bid shall be considered only if the circumstances outlined in the provision in 7-2002.2 are applicable.

2-303.2 *Notification to Late Bidders.* When a late bid, modification of bid, or withdrawal of bid is received and it is clear from available information that it cannot be considered, the Contracting Officer shall promptly notify the bidder that it was received late and will not be considered (see also 2-303.3). However, when a late bid, modification of bid or withdrawal of bid is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the bidder shall be promptly notified substantially as follows:

> Your bid in response to Invitation for Bids Number .... dated .... was received after the time for opening specified in the Invitation. Accordingly, your bid will not be opened or considered for award unless there is received from you by ....(date) the original post office receipt for registered or certified mail showing a date of mailing not later than the fifth calendar day prior to the date specified for opening (*e.g.*, a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier).

2-303.3 *Disposition of Late Submissions.* Late bids, modification of bids, or withdrawal of bids which are not considered for award shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids.

2-303.4 *Records.* The following shall, if available, be included in the purchasing office files with respect to each late bid, modification of bid, or withdrawal of bid:

(i) the date of mailing, filing, or delivery, as the case may be;
(ii) the date and hour of receipt;
(iii) whether or not considered for award, and
(iv) the wrapper or other evidence if considered for award.

Part 4—Opening of Bids and Award of Contract

2–401 Receipt and Safeguarding of Bids.

(a) All bids (including modifications) received prior to the time of opening shall be kept secure, and, except as provided in (b) below, unopened, in a locked bid box or safe. If an invitation for bids is canceled, bids shall be returned to the bidders. Necessary precautions shall be taken to insure the security of the bid box or safe. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Government employees, and then only on a "need to know" basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Unidentified bids may be opened solely for the purpose of identification, and then only by an official specifically designated for this purpose by the head of the purchasing office. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position on the envelope and deliver it to the aforesaid official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bids number, and his signature, and shall then immediately reseal the envelope.

2–402 Opening of Bids.

2–402.1 *Unclassified Bids.*

(a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived, and shall so declare to those present. He shall then personally and publicly open all bids received prior to that time, and when practicable read them aloud to the persons present, and have the bids recorded. The original of each bid shall be carefully safeguarded until the abstract of bids required by 2–403 has been made and its accuracy verified.

(b) Performance of the procedure in (a) above may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of such assistant.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. However, original bids shall not be allowed to pass out of the hands of a Government official unless a duplicate bid is not available for public inspection. In such case, the original bid may be examined by the public only under the immediate supervision of a Government official and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bid. However, see 2–404.4 with respect to public disclosure of descriptive literature or material submitted by a bidder on a restrictive basis.

2–402.2 *Classified Bids.* The opening of classified bids shall not be accessible to the general public. Such opening may be witnessed and the results recorded by those bidder representatives (i) who have been previously cleared from a security standpoint and (ii) who represent bidders who were invited to bid on the procurement. Bids shall be made available only to those persons authorized to attend the opening of bids. The procedures set forth in 2–402.1 for safeguarding unclassified bids are also applicable to classified bids. No public record shall be made of bids or bid prices received on classified invitations for bids.

2-402.3 *Postponement of Openings.*

(a) Notwithstanding 2-208, an amendment postponing bid openings may be issued even after the time scheduled for bid opening but otherwise in accordance with 2-208:

- (i) when the contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails for causes beyond their control and without their fault or negligence (such as, but not limited to, flood, fire, accident, weather conditions or strikes); or
- (ii) when emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid openings as scheduled is impracticable.

(b) At the time a determination is made to postpone a bid opening under (a)(i) above, an announcement of the determination shall be publicly posted and, if practicable before issuance of formal amendment of the invitation, otherwise communicated to prospective bidders likely to attend the scheduled bid opening.

(c) In the case of (a)(ii) above, the contracting officer may proceed with the bid opening as soon as practicable after the time scheduled, without prior amendment to the invitation for bids or notice to bidders, whenever the delay incident to such amendment or notice is not in the best interest of the Government. In such case, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining "late bids" under 2-303.

2-403 Recording of Bids.

(a) The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered on Abstract of Bids (DD Form 1501) which, except in the case of classified procurement, shall be available for public inspection. Abstract of Bids—Construction (DD Form 1501-1) shall be used for recording construction bids. When the items are too numerous to warrant the recording of all bids completely, an entry should be made of the opening date, invitation number, general description of the material, item number, and the price bid. The record or abstract shall be completed as soon as practical after the bids have been opened, and, as soon as all bids have been opened and read, the bid opening officer shall so certify on the record or abstract. If the invitation for bids is canceled before the time set for bid opening, this shall be recorded, together with a statement of the number of bids invited and the number of bids received. Copies of the abstract on unclassified bids exhibited to the public shall not contain information such as failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with 1-329.

(b) The above forms need not be used by the Defense Fuel Supply Center for procurements of coal or petroleum products or for perishable subsistence items by Defense Personnel Support Center.

2-404 Rejection of Bids.

2-404.1 *Cancellation of Invitation After Opening.*

(a) The preservation of the integrity of the competitive bid system dictates that after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing the unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be canceled and readvertised due solely to increased requirements for the items being procured; award should be made on the initial invitation for bids and the additional quantity required should be treated as a new procurement.

(b) When it is determined prior to award but after opening that the requirements of 1-1203 (relating to the availability and identification of specifications) have not been met, the invitation for bids shall be canceled. Invitations for bids may be canceled after opening but prior to award when such action is consistent with (a) above and the contracting officer determines in writing that—

- (i) inadequate or ambiguous specifications were cited in the invitation;
- (ii) specifications have been revised;
- (iii) the supplies or services being procured are no longer required;
- (iv) the invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting government-furnished property to bidders' plants;
- (v) bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited;
- (vi) all otherwise acceptable bids received are at unreasonable prices;
- (vii) the bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see 1-111 for reports to be made to Department of Justice); or
- (viii) for other reasons, cancellation is clearly in the best interest of the Government.

Determinations to cancel invitations for bids shall state the reasons therefor.

(c) Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties if any) in order to avoid the need for readvertisement.

2-404.2 *Rejection of Individual Bids.*

(a) Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid which does not conform to the specifications contained or referenced in the invitation for bids shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid which fails to conform to the delivery schedule or permissible alternates thereto stated in the invitation for bids shall be rejected as nonresponsive.

(d) Ordinarily, a bid should be rejected when the bidder attempts to impose conditions which would modify requirements of the invitation for bids or limit his liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder:

(i) attempts to protect himself against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;
(ii) fails to state a price and in lieu thereof states that price shall be "price in effect at time of delivery;"
(iii) states a price but qualified such price as being subject to "price in effect at time of delivery;"
(iv) when not authorized by the invitation, conditions or qualifies his bid by stipulating that his bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement;
(v) requires that Government is to determine that bidder's product meets Government specification; or
(vi) limits rights of Government under any contract clause.

A low bidder may be requested to delete objectionable conditions from his bid *provided* these conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality or delivery of the items offered.

(e) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(f) Bids received from any person or concern whose name is included in the current "Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors" shall be rejected if required by Section I, Part 6.

(g) Low bids received from concerns determined to be not responsible, pursuant to 1-904, shall be rejected. (But see 1-705.4, if the bidder is a small business concern.)

(h) When a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected except as otherwise provided in 10-102.5.

(i) The originals of all rejected bids, and any written findings with respect to such rejection, shall be preserved with the papers relating to the procurement.

2-404.3 *Notice to Bidders of Rejection of All Bids.* When he determines to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

2-404.4 *Restrictions on Disclosure of Descriptive Literature.* When a bid is accompanied by descriptive literature (as defined in 2-202.5(a)), and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see 2-202.5(f)).

2-404.5 *All or None Qualifications.* Unless the invitation for bids so provides, a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualification is substantive and affects the rights of the other bidders.

2-405 Minor Informalities or Irregularities in Bids. A minor informality or irregularity is one which is merely a matter of form or is some immaterial variation from the exact requirements of the invitation for bids, having no effect or merely a trivial or negligible effect on price, quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The contracting officer shall either give to the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid, or, waive any such deficiency where it is to the advantage of the Government. Examples of minor informalities or irregularities include:

(i) failure of bidder to return the number of copies of signed bids required by the invitation;

(ii) failure to furnish required information concerning the number of the bidder's employees or failure to make a representation concerning his size status;

(iii) failure of a bidder to sign his bid, but only if—

- (A) the firm submitting the bid has formally adopted or authorized the execution of documents by typewritten, printed, or rubber stamped signature and submits evidence of such authorization and the bid carries such a signature, or
- (B) the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document such as the submission of a bid guarantee with bid, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself;

(iv) failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if—

- (A) the bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bid and the bidder submitted a bid thereon, or
- (B) the amendment clearly would have no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or the relative standing of bidders, such as an amendment correcting a typographical mistake in the name of the Government purchasing activity;

(v) failure to furnish an affidavit concerning affiliates, if required pursuant to 2-201(a)B(ii) and (b)(xvii); and

(vi) failure to execute the certifications with respect to Equal Opportunity and Affirmative Action Programs, as set forth in 7-2003.14(b)(1)(B) and 7-2003.14(b)(2).

(vii) Reserved.

2-406 Mistakes in Bids.

2-406.1 *General.* After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes, and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in the manner set forth below. Such actions shall be taken prior to award.

2-406.2 *Apparent Clerical Mistakes.* Any clerical mistake apparent on the face of a bid may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder written or telegraphic verification of the bid actually intended. Examples of such apparent mistakes are: obvious error in placing decimal point; obvious discount errors (for example—1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. factory; obvious error in designation of unit. Correction of the bid will be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction will not be made on the face of the bid; however, it shall be reflected in the award document.

2-406.3 *Other Mistakes.*

(a) The Departments are authorized to make the following administrative determinations in connection with mistakes in bids, other than apparent clerical mistakes, alleged after opening of bids and prior to award.

(1) When the bidder requests permission to withdraw a bid and clear and convincing evidence establishes the existence of a mistake, a determination permitting the bidder to withdraw his bid may be made.

(2) However, if the evidence is clear and convincing both as to existence of the mistake and as to the bid actually intended, and if the bid, both as uncorrected and as corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

(3) When the bidder requests permission to correct a mistake in his bid and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended, a determination permitting the bidder to correct the mistake may be made; *provided* that, in the event such correction would result in displacing one or more lower bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(4) When the evidence is not clear and convincing that the bid as submitted was not the bid intended, a determination may be made requiring that the bid be considered for award in the form submitted.

(b) Authority for making the determinations described in subparagraph (a)(1) above may be delegated, without power of redelegation, to any purchasing activity having legal counsel available. Authority for making the determinations described in (a)(2), (3), and (4) above may be delegated, without power of redelegation as set forth below:

(1) Department of the Army: To the Deputy or Assistant Deputy for Materiel Acquisition, Office of the Assistant Secretary of the Army (Installations and Logistics); General Counsel of the U. S. Army Materiel Command; General

Counsel of the Office of the Chief of Engineers; Chief, Procurement Law Division, Office of The Judge Advocate General, Headquarters, Department of the Army.

(2) Department of the Navy: To the Assistant Commander for Contracts, Naval Facilities Engineering Command Headquarters; the Deputy Commander Purchasing, Naval Supply Systems Command Headquarters.

(3) Department of the Air Force: To the Staff Judge Advocate, Headquarters, Air Force Logistics Command.

(4) Defense Supply Agency: The Counsel and Assistant Counsel.

(5) National Security Agency: Director of Procurement.

(6) Defense Communications Agency: The Counsel.

(7) Defense Nuclear Agency: Deputy Director, Operations and Administration.

(8) Defense Mapping Agency: The Counsel.

(c) Each proposed determination shall have the concurrence of legal counsel within the Department concerned prior to issuance.

(d) To support correction of an allegedly erroneous bid subsequent to opening, the records submitted by the contracting officer in accordance with Departmental procedures shall contain the best available evidence conclusively establishing not only the existence of the error, but its nature, how it occurred, and what the bidder actually intended to bid. A mere statement that the administrative officials themselves are satisfied that an error was made is insufficient.

(e) In order to assure compliance with (d) above, suspected or alleged mistakes in bids will be processed as follows:

(1) In the case of any suspected mistake in bid, the contracting officer will immediately contact the bidder in question calling attention to the suspected mistake, and request verification of his bid. The action taken to verify bids must be sufficient to either reasonably assure the contracting officer that the bid as confirmed is without error or elicit the anticipated allegation of a mistake by the bidder. To insure that the bidder concerned will be put on notice of a mistake suspected by the contracting officer, the bidder should be advised, as is appropriate, of (i) the fact that his bid is so much lower than the other bid or bids as to indicate a possibility of error, (ii) important or unusual characteristics of the specifications, (iii) changes in requirements from previous purchases of a similar item, or (iv) such other data proper for disclosure to the bidder as will give him notice of the suspected mistake. If the bid is verified, the contracting officer will consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time, the bid shall be considered as originally submitted. If a bidder alleges a mistake, the contracting officer will advise the bidder to make a written request indicating his desire to withdraw or modify the bid. The request must be supported by statements (sworn statements if possible) concerning the alleged mistake and shall include all pertinent evidence such as bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractor's quotations, if any, published price lists, and any other evidence which conclusively establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(2) When the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(3) When the bidder furnishes evidence in support of an alleged mistake, the contracting officer shall refer the case to the appropriate authority, together with the following data:

(i) a signed copy of the bid involved;
(ii) a copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake;
(iii) an abstract or record of the bids received;
(iv) a written request by the bidder to withdraw, or modify the bid, together with the bidder's written statement and supporting evidence (such as work sheets, or other data used in preparing the bid) of the existence of the mistake and manner in which it occurred, and supporting evidence of the bid actually intended;
(v) a written statement by the contracting officer setting forth (A) a description of the supplies or services involved, (B) the expiration date of the bid in question and of the other bids submitted, (C) specific information as to how and when the mistake was alleged, (D) a summary of the evidence submitted by the bidder, (E) in the event only one bid was received, a quotation of the most recent contract price for the supplies involved, or, in the absence of a recent contract for the item, the contracting officer's estimate of a fair price for the item, and (F) any additional evidence considered pertinent. The statement shall recommend that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw the bid, or the bidder be authorized to modify the bid.

When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, contracting officers will not refer mistake in bid cases by telegraph or telephone to the designated authority, when the determinations set forth in (a)(2) and (3) above are applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(f) Nothing contained in this paragraph 2-406.3 prevents a Department from submitting doubtful cases to the Comptroller General for advance decision.

(g) A signed copy of the administrative determination authorizing withdrawal or modification of the bid made in accordance with (a) above shall accompany the appropriate finance center copy of the contract awarded. Each Department shall maintain records of all administrative determinations made in accordance with (a) above, together with a complete statement of the facts involved and the action taken in each case. Copies of all administrative determinations will be included in the contract file.

2-406.4 *Reserved.*

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2-407 Award.

2-407.1 *General.* Unless all bids are rejected, award shall be made by the contracting officer, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. If a proposed award requires approval of higher authority, such award shall not be made until approval has been obtained. Awards shall be made by mailing or otherwise furnishing to the bidder a properly executed award document (see Section XVI, Parts 1 and 4) or notice of award on such form as may be prescribed by the procuring activity. When a notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. When two or more awards are made to a single bidder on an invitation, the copy of the successful bid marked "original" will be attached to the appropriate finance center copy and a copy marked "duplicate" will be attached to the retained office copy of the first award issued, and succeeding awards will be inscribed to indicate the number of the award to which the original and duplicate bids are attached. This is necessary for legal review and auditing by the General Accounting Office. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

2-407.2 *Responsible Bidder.* Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see Section I, Part 9).

2-407.3 *Prompt Payment Discounts.*

(a) Prompt payment discounts shall not be considered in the evaluation of offers. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the offeror. As an alternative to indicating a discount in conjunction with the offer, offerors may prefer to offer discounts on individual invoices.

(b) Pending the issuance of a revised edition of Standard Form 33-A, *Solicitation Instructions and Conditions*, the provision at 7-2003.35 shall be included in all solicitations to which this form is applicable.

(c) If Standard Form 33-A is not used in the solicitation, but the procurement is one regarding which offerors may offer prompt payment discounts, the provision in 7-2003.35 shall be used, except that the words in the first sentence beginning with "Paragraph 9(a)" and ending with "is deleted, and" shall be omitted.

2–407.4 *Economic Price Adjustment.*

(a) When an invitation for bids does not contain an economic price adjustment clause, bids received, which quote a price and contain an economic price adjustment provision with a ceiling which the price will not exceed, will be evaluated on the maximum possible economic price adjustment of the quoted base price. If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause subject to the same ceiling. If the bidder will not agree to such approved clause, the award may be made on the basis of the bid as originally submitted. Bids which contain economic price adjustment with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) When an invitation for bids contains an economic price adjustment clause and no bidder takes exception to the economic price adjustment provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added. When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation for bids or limits the downward economic price adjustment provisions of the invitation, the bid will be rejected as nonresponsive. When a bidder deletes the economic price adjustment clause from his bid, the bid will be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited. When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, if after evaluation, the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

2-407.5 *Other Factors To Be Considered.* The factors set forth in (i) through (vi) below, among others, may be considered in evaluating bids.

(i) Foreseeable costs or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc. If, pursuant to 19-301.1, bids are on an f.o.b. origin basis, transportation costs to the designated destination points shall be considered in determining the lowest cost to the Government.
(ii) Changes made or requested in any of the provisions of the solicitation to the extent that any such change does not constitute ground for rejection of the bid under the provisions of 2-404.
(iii) Advantages or disadvantages to the Government that might result from making multiple awards (see 2-201(a)Sec.M(iii)).
(iv) Qualified products (see Section I, Part 11).
(v) Federal, State, and local taxes (see Section XI).
(vi) Origin of supplies, whether domestic or foreign, and if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Section VI).

2-407.6 *Equal Low Bids.*

(a)(1) When two or more low bids are equal in all respects, considering all factors except the priorities set forth in (2) below, award shall be made in accordance with the order of priorities therein. Only priority (ii) is applicable to construction contracts. When two or more low bids are equal in all respects, considering all factors including the priorities set forth in (2) below, award shall be made by a drawing by lot which shall be witnessed by at least three persons and which may be attended by the bidders or their representatives.

(2) For the purposes of (1) above, preference shall be given in the following order of priority:

(i) concerns which qualify as labor surplus area concerns and which are also small business concerns;
(ii) other small business concerns;
(iii) other labor surplus area concerns.

(b) When award is to be made by drawing by lot and the information available shows that the product of a particular manufacturer has been offered by more than one bidder, a preliminary drawing by lot shall be made to ascertain which of the bidders offering the product of a particular manufacturer will be included in the final drawing to determine the award.

(c) When an award is determined by drawing by lot, the names and addresses of the three witnesses and the person supervising the drawing shall be placed on all copies of the abstract of bids or otherwise recorded.

(d) In each award where preference is to be given under this Section, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

2–407.7 *Reserved.*

2–407.8 *Protests Against Award.*

(a) *General.*

(1) Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest. (See 1–308(b)(i).) (See 1–703(b) for protests of small business status and 12–604(a) for protests involving eligibility under the Walsh-Healey Public Contracts Act.) An interested party wishing to protest to the Comptroller General of the United States against an award of a contract should do so in accordance with General Accounting Office Regulations, Title 4, Chapter 1, Part 20 of the Code of Federal Regulations.

(2) When a protest, before or after award, has been lodged with a higher authority or the Comptroller General and the contracting officer is requested to submit a report, the file should include:

(i) a copy of the protest;

(ii) a copy of the bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iii) a copy of the invitation for bids including the specifications or portions thereof relevant to the protest;

(iv) a copy of the abstract of bids or relevant portions thereof;

(v) any other documents which are relevant to the protest; and

(vi) a statement signed by the contracting officer setting forth his findings, actions, and recommendations in the matter together with any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegations of the protest. If the award was made after receipt of the protest, the contracting officer's report will include the determination prescribed in (b)(3).

(3) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest. They shall also be advised that they may submit their views and relevant information to the contracting officer within a specified period of time, normally within one week, and that copies of such submissions should be furnished directly to the General Accounting Office when the protest has been filed with that office.

(4) Timely action on protests is essential to avoid undue delay in procurements and to assure fair treatment to protesting firms or individuals. Accordingly, protests should be handled on a priority basis. Upon receipt of informal advice that a protest has been filed with the General Accounting Office, the contracting officer shall immediately begin compiling the information necessary for a report to that office. To expedite processing, the Departmental official who furnishes the Department's report to the General Accounting Office (GAO) should upon request of the protestor or the GAO simultaneously furnish a copy (except for classified or privileged information) to the protester, and advise the GAO that this has been done. In such cases, the protester shall be requested to furnish a copy of any comments on the administrative report directly to the General Accounting Office as well as to the contracting officer.

(5) To facilitate these submissions to the GAO, each Department shall furnish the GAO with the name, title, and telephone number of one or more officials whom the GAO may contact regarding protests.

(b) *Protests Before Award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, the bidders whose bids might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under (3) below.

(2) When a protest has been received before award, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. When it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award under (3) below must be approved at an appropriate level above that of the contracting officer, in accordance with Departmental procedures. While award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(3) When a written protest against the making of an award is received, award shall not be made until the matter is resolved, unless the contracting officer determines that:

(i) the items to be procured are urgently required; or

(ii) delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) a prompt award will otherwise be advantageous to the Government.

If award is made under (i), (ii), or (iii) above, the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

(c) *Protests After Award*. A protest received after award shall be handled in accordance with Departmental procedures. The contractor shall generally be advised of any protest to the General Accounting Office and the basis therefor. When it appears likely that an award may be invalidated, and a delay in receiving the supplies or services is not prejudicial to the Government's interest, the contracting officer should seek a mutual agreement with the successful offeror to suspend performance on a no-cost basis.

2-407.9 *Limited Bid Response*. When an advertised solicitation results in relatively few bids, the contracting officer shall attempt to determine the cause of the limited response and initiate any indicated corrective action for future procurements.

2-408 Information to Bidders.

2-408.1 *Unclassified Awards*. In the case of all unclassified formally advertised contracts, the purchasing office shall as a minimum (subject to any restrictions in Section I, Part 6), (i) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (ii) extend the appreciation of the purchasing office for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be either orally or in writing through the use of a form postal card or other appropriate means. When award is made to other than a low bidder, the contracting officer shall state the reason for rejection in the notice to each unsuccessful low bidder. Should additional information be requested, the purchasing office shall provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, and should also inform the inquirers as to the location where a copy of the abstract of bids is available for inspection. However, when multiple awards have been made and furnishing the names, addresses, and contract prices of the successful bidders would require so large an amount of work as to interfere with normal operations of the purchasing office, only information concerning location of the abstract of bids need be given. When request is received concerning an unclassified invitation for bids from an inquirer who is neither a bidder nor a representative of a bidder, the purchasing office should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so large amount of work as to interfere with the normal operations of the purchasing office, the inquirer will be advised where a copy of the abstract of bids may be seen. Requests for records shall be governed by 1-329.

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2-408.2 *Award of Classified Contracts.* In addition to 2-408.1(i) and (ii), if classified information was furnished or created in connection with the solicitation, the PCO shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with the Industrial Security Manual (DoD 5220.22-M). Information with respect to the name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. No information regarding a classified award may be furnished by telephone.

2-409 Synopsis of Contract Awards. See 1-1005.1.

Part 5—Two-Step Formal Advertising

2-501 General. Two-step formal advertising is a method of procurement designed to expand the use and obtain the benefits of formal advertising where inadequate specifications preclude the use of conventional formal advertising. It is especially useful in procurements requiring technical proposals, especially those for complex items. It is conducted in two steps:

(i) Step one consists of the request for, and submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes engineering approach, special manufacturing processes, and special testing techniques. When it is necessary in order to clarify basic technical requirements, related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. Conformity to the technical requirements is resolved in this step, but matters of responsibility as defined in 1-903 are not.

(ii) Step two is a formally advertised procurement confined to those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Parts 3 and 4 of this Section.

Two-step formal advertising requires that the contracting officer work closely with technical personnel and that he utilize their specialized knowledge in determining the technical requirements of the procurement, in determining the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of this method is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirement, including an adequate technical data package, so the subsequent procurements may be made by conventional formal advertising.

2-502 Conditions for Use.

(a) Two-step formal advertising shall be used in preference to negotiation when all of the following conditions are present, unless other factors require the use of negotiation, *e.g.*, 3-213;

(i) available specifications or purchase descriptions are not sufficiently definite or complete or may be too restrictive, and the listing of the salient characteristics in a "brand name or equal" description would likewise be too restrictive, to permit full and free competition without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to insure mutual understanding between each source and the Government;

(ii) definite criteria exist for evaluating technical proposals, such as design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance;

(iii) more than one technically qualified source is expected to be available;

(iv) sufficient time will be available for use of the two-step method; and

(v) a firm fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following in itself precludes the use of two-step formal advertising:

(i) A multi-year procurement is being made.
(ii) A first or subsequent production quantity is being procured under a performance specification.
(iii) Government-owned facilities or special tooling is to be made available to the successful bidder.
(iv) A total small business set-aside is involved (see 1–706.5(b) and 1–706.2). A total small business set-aside would not be appropriate in a procurement of a highly technical and complex item where it is anticipated that, in order to obtain adequate competition (1) a significant number of acceptable technical proposals must be received from firms with prior testing, developmental and production experience of the item, or major components thereof, and (2) the restriction of such procurement to small business firms would seriously limit the number of qualified firms eligible to submit proposals.

2–503 Procedures.

2–503.1 *Step One.*

(a) A request for technical proposals shall be distributed to qualified sources in accordance with 1–302.2. In addition, the request shall be synopsized in accordance with Section I, Part 10. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(i) the best practicable description of the supplies or services required;
(ii) notification of the intent to conduct the procurement in two steps and the actions involved;
(iii) the requirements of the technical proposal, *i.e.*, the necessary details such as drawings, data, presentations, etc., to be submitted;
(iv) the criteria for evaluating the technical proposal (see 2–502(a) (ii));
(v) a statement that the technical proposals shall not include prices or pricing information;
(vi) the date or date and hour by which the proposal must be received and the Late Technical Proposals provision in 7–2002.3 (this replaces paragraphs 7 and 8 of Standard Form 33A);
(vii) a statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards; and that each bid in the second step must be based on the bidder's own technical proposals;
(viii) a statement that offerors are advised to submit proposals which are fully and clearly acceptable without additional explanation or information, since the Government may make a final determination as to whether a proposal is acceptable or unacceptable solely on the basis of the proposal as submitted and proceed with the second step without requesting further information from any offeror; however, if the Government deems it necessary to obtain sufficient acceptable

proposals to assure adequate price competition in the second step or deems it otherwise desirable in its best interest the Government may, in its sole discretion, request additional information from offerors of proposals which the Government considers reasonably susceptible of being made acceptable by additional information clarifying or supplementing but not basically changing any proposal as submitted and, for this purpose, the Government may discuss any such proposal with the offeror;

(ix) a statement that each source submitting an unacceptable technical proposal will be so notified upon completion of the technical evaluation of his proposal, and final determination of such unacceptability; and

(x) a statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When compliance with specifications permit utilization of essentially different technical approaches, it is generally in the interest of the Government to authorize the submission of multiple proposals. If multiple proposals are authorized the request shall include the clause in 7-2003.36.

(b) Although the Government's delivery or performance requirements are not evaluation factors under Step One, information about those requirements may be of assistance to potential bidders in determining whether or not to submit a technical proposal. Accordingly, a request for technical proposals may contain a statement indicating what the Government's probable contract delivery or performance requirements will be. The statement shall also advise that such information is not binding on the Government and that the Government's actual delivery or performance requirements will be contained in invitations for bids issued under Step Two.

(c) Upon the receipt of technical proposals:

(i) every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons;

(ii) technical proposals submitting data marked in accordance with 3-507.1 shall be accepted and handled in accordance with that paragraph; and

(iii) any reference to price or cost shall be removed.

(d) The contracting officer shall establish a time period within which technical proposals will be evaluated. The time period may vary from procurement to procurement depending upon the complexity and number of proposals involved. However, it is essential that the evaluation of technical proposals by all personnel concerned with the procurement, as well as any subsequent discussion with sources submitting technical proposals, be completed expeditiously.

(e) Technical evaluation of the proposals shall be based upon the criteria contained in the request for technical proposals and such evaluation shall not include consideration of responsibility as defined in 1-903. The proposals as submitted, shall be categorized as:

(i) acceptable;

(ii) reasonably susceptible of being made acceptable by additional information clarifying or supplementing, but not basically changing the proposal as submitted; or

(iii) in all other cases, unacceptable.

Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable. If the contracting officer determines that there are sufficient proposals in category (i) above to assure adequate price competition under step two and that further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the best interest of the Government, he may proceed directly with step two. Otherwise, the contracting officer shall request bidders under proposals in category (ii) above to submit additional information, setting forth to the extent practicable the nature of the deficiencies in the proposal as submitted or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals as submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(f) Upon final determination that a technical proposal is unacceptable, the contracting officer shall promptly notify the source submitting the proposal of that fact. The notice shall state that revision of his proposal will not be considered, and shall indicate, in general terms, the basis for the determination for example, that rejection was based on failure to furnish sufficient information or on an unacceptable engineering approach. Upon written request, and at the earliest feasible time after contract award, such source(s) shall be debriefed in accordance with 3-508.4.

(g) Consideration of late technical proposals is governed by the procedure in 3-506.

(h) If, as a result of the evaluation of technical proposals, it appears necessary to discontinue two-step formal advertising, a statement setting forth the full facts and circumstances shall be made a part of the contract file. Each source will be notified in writing of the discontinuance and the reason therefor. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the procurement may be continued by negotiation under the authority of 3-210.2(iii). (But see 3-210.3.)

2-503.2 *Step Two.* Upon completion of step one, a formally advertised procurement in accordance with Parts 2, 3, and 4 of this Section will be conducted except that invitations for bids:

(i) will be issued only to those sources whose technical proposals have been evaluated and determined to be acceptable under step one;

(ii) will include the provision in 7-2003.37;

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(iii) will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposal, as finally accepted, under the request for technical proposals. This should be accomplished in the item description by a provision substantially in the form of the following example.

> Radio Antenna, in accordance with Exhibit No. .... dated .... (*use other description of specifications as appropriate*) and your Technical Proposal .... (*insert specific identification of the bidder's proposal including any revision thereof as finally accepted*) incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

(iv) will not be synopsized (see Section I, Part 10) or publicly posted (see 2-203.2), except that the names of firms which have submitted acceptable technical proposals in the first step of two-step formal advertising will be listed in the *Commerce Business Daily* for the benefit of prospective subcontractors in accordance with 1-1003.6(a)(2).

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SECTION III

PROCUREMENT BY NEGOTIATION

Part 1—Use of Negotiation

3-100 Scope of Part. This Part deals with the nature and use of negotiation as distinguished from formal advertising, and with limitations upon that use.

3-101 General.

(a) Pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions (1) through (17) set forth in Part 2 of this Section. However, procurement shall be made by formal advertising when such method is feasible and practicable, even though existing conditions and circumstances would otherwise satisfy the requirements of Part 2 of this Section.

(b) When supplies or services are to be procured by negotiation, offers shall be solicited from the maximum number of qualified sources consistent with the nature and requirements of the supplies or services to be procured.

(c) No contract shall be entered into as a result of negotiation unless a business clearance or approval as is prescribed by applicable Departmental procedures has been obtained.

(d) Negotiated procurements shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be necessarily noncompetitive, the contracting officer is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action should include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements (1-305.2(a)), and possible breakout of components for competitive procurement. Except for procurement of electric power or energy, gas (natural or manufactured), water, or other utility services, and procurement of educational services from nonprofit institutions, contracts in excess of $10,000 shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer to assure compliance with this subparagraph.

3-102 Reserved.

3-103 Records and Reports of Negotiated Contracts. In addition to the records and reports described in 1-308, 3-211.4, and 3-216.4, each Department is required to maintain a record of the total value of all contracts negotiated by it during each fiscal year under each of the circumstances permitting negotiation enumerated in Section III, Part 2. These records, and reports based thereon, are maintained through the Department of Defense Procurement reporting system described in 1-110 and Section XXI, Part 1.

3-104 Aid to Small Business and Minority Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given to the size

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and minority status of the business concerns, and when subcontracting is consistent with the best interests of the Government, the extensive use of subcontractors shall be a favorable factor. See Section I, Part 7, and 1–322.

3–105 Aid to Labor Surplus Area Concerns in Negotiated Procurements. When negotiation is conducted, consideration shall be given as to whether the prospective supplier is a labor surplus area concern. See Section I, Part 8.

3–106 Presolicitation Notices and Conferences.

3–106.1 *General.* This Part describes a procedure which may be used as a preliminary step to negotiated procurements where the cost of preparing a formal solicitation and response would be substantial for both the Government and industry. This procedure is designed to develop sources for procurement; permit the Government to solicit for preliminary information based on a general description of the supplies or services involved; permit prospective offerors to submit proposals without undue expenditure of effort, time, and money; and to explain complicated specifications and requirements to interested firms. The presolicitation conference shall not be used as a method for prequalification of offerors, and may be used only when approved at a level higher than the contracting officer.

3–106.2 *Presolicitation Procedure.*

(a) When a presolicitation notice is used it shall be prepared by the contracting officer and forwarded to all known potential offerors. It shall at least request an expression of interest in the contemplated procurement and shall designate a time for submission of responses. In cases of complex procurement, it may also request information pertaining to management, engineering, and production capabilities. Each notice shall define as explicitly as possible the information to be furnished by the offeror and shall indicate whether it is contemplated that the presolicitation notice will be followed by a conference and a formal solicitation. Detailed drawings, specifications, or plans shall not normally be included in a presolicitation notice. The presolicitation notice shall be synopsized in accordance with 1–1003. See 1–309 for solicitations for informational or planning purposes; 2–205.6 for pre-invitation notices in formally advertised procurements; and 2–207 and 3–504 for pre-bid and pre-proposal conferences, respectively.

(b) All of those responding to the presolicitation notice shall be advised of the details of any pending presolicitation conference. The presolicitation conference shall be conducted by procurement personnel, and attended by technical and legal personnel as appropriate. All prospective offerors attending the conference shall be furnished copies of the solicitation, unless they decline to participate in the procurement. If it is determined to proceed with the procurement without a conference, those responding to the presolicitation notice shall be furnished a formal solicitation, except those who decline to participate. In addition, a copy of the solicitation shall be furnished to any prospective offeror who requests one (but see 1–603 and 1–609.7).

(c) All prospective contractors shall be furnished identical information in connection with the proposed procurement. Care shall be taken to safeguard any information received in confidence. (See 1–1004.)

3–107 Reserved.

3-108 Negotiation of Initial Production Contracts for Technical or Specialized Military Supplies.

(a) The production of important new technical or specialized military supplies generally involves development, evaluation, and initial production phases. Examples of such supplies are tanks, radar, guided missiles, aircraft, rockets, and equipment of similar complexity; major components of such equipment as the foregoing; and any items of technical or specialized nature necessary for the use, maintenance or operation of such equipment. Contracting officers shall avoid, wherever practicable, awarding initial production contracts for supplies until completion of the development and evaluation phases. At the time of placing the initial production contract, it is essential that the Government be completely free to select the contractor as the best interest of the Government may dictate. In the placement and administration of research or development contracts, no commitments shall be made to contractors with respect to obtaining subsequent production contracts. Procurements for initial production quantity of an item shall not be initiated until the item has been approved for service use unless prior approval has been obtained. When justified by special circumstances, procurements of production quantities in advance of approval for service use may be authorized for the Departments of the Army and Air Force by Heads of the Procuring Activity, and for the Department of the Navy by the appropriate authority set forth in SECNAV Instruction 3900.30 and 3960.2.

(b) In connection with the foregoing it may be in the best interest of the Government that the initial production contract for technical and specialized supplies be placed with the contractor responsible for the development of the design for such supplies. Accordingly, it is essential that, in placing such initial production contracts, an analysis be made of the importance to be attached to the following considerations:

- (i) Extensive preliminary research and development work which can be put to most effective use in production by the research and development contractor for any of the following reasons:
  - (A) A need for adaptation of the newly developed equipment for quantity manufacture, and for introduction of advanced production methods, together with a significant interrelationship between the design engineering and production engineering, which will yield best results from the standpoint of performance, reliability, and producibility; or
  - (B) The substantial time and money which would be required for another contractor to indoctrinate and train his engineering staff in the specialized techniques or novel design concepts which have been employed, thereby adding to production lead time.
- (ii) Continuing improvement of the equipment, concurrent with production which can be most effectively accomplished by a single contractor because of the advantages of unified responsibility and close coordination of improved design features with production processes and equipment.
- (iii) Substantial time and effort which have been already expended by the development contractor in developing a prototype.
- (iv) The advantages to be gained through obtaining production drawings, *e.g.*,detailed manufacturing, process, and assembly drawings, with

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rights to use for procurement purposes at the earliest possible date for competitive reprocurement purposes by placing production engineering contracts and the first production contract with the developer (see (d) below).

(c) When it is in the Government's interest to award the initial production contract to the development contractor, price alone should not be allowed to dictate an award elsewhere unless a fair and reasonable price cannot be negotiated with the development contractor, or unless the price advantage in award to another supplier is so substantial as to outweigh the other factors involved. This paragraph 3-108 is not to be construed to require or to prevent competitive pricing. Initial production contracts shall not be awarded to development contractors who do not have fully adequate and available financial, technical and production resources.

(d) The number of items to be procured under an initial production contract will be established only after considering all pertinent factors, including the practical minimum quantity suitable to permit the development of the production design and a data package adequate to establish competitive procurement of the item at the earliest practicable date.

(e) To the extent practicable, the initial production contract should also provide for the furnishing of an initial supply of special testing equipment, special tools, demonstration sets, and manuals required for operation, maintenance and training.

3-109 Abstract of Proposals. The abstract of proposals required by 1-308 shall be prepared on Abstract of Bids (DD Form 1501) or Abstract of Bids—Construction (DD Form 1501-1) appropriately modified (see 16-817) to include all the information necessary for evaluation (but see 3-507.2 and 3-805.1). These forms need not be used in the case of procurement from a single source of supply, for research and development, for the chartering of vessels by the Military Sealift Command, for the procurement of coal and petroleum products by the Defense Fuel Supply Center, or for perishable subsistence items by the Defense Personnel Support Center.

Part 2—Circumstances Permitting Negotiation

3-200 General. Subject to the limitations set forth in Part 1 of this Section III and pursuant to the authority of 10 U.S.C. 2304(a), procurement may be effected by negotiation under any one of the exceptions ((1) through (17) of 10 U.S.C. 2304(a)) set forth in this Part 2, subject, in the case of construction contracts, to the further restrictions of 10 U.S.C. 2304(c) as set forth in 18-301. Each negotiated contract shall contain a reference to the authority under which it was negotiated.

3-201 National Emergency.

3-201.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(1), purchases and contracts may be negotiated if—

> "it is determined that such action is necessary in the public interest
> during a national emergency declared by Congress or the President."

3-201.2 *Application*.

(a) The authority of this paragraph 3-201 shall be used only to the extent determined by the Assistant Secretary of Defense (Installations and Logistics) to be necessary in the public interest, and then only in accordance with Departmental procedures consistent with this paragraph 3-201.

(b) For the duration of the national emergency declared pursuant to Presidential Proclamation 2914, dated December 16, 1950, the Assistant Secretary of Defense (Installations and Logistics) has determined that only the following procurements may be made pursuant to the authority of 10 U.S.C. 2304(a)(1):

(i) procurements made in keeping with (A) labor surplus set-aside programs (including, when no other negotiating authority is appropriate and the use of formal advertising is not feasible and practicable under the existing conditions and circumstances, the placement of contracts for the total or any part of the requirements set-aside which are not filled by awards made in accordance with the provisions of the Notice of Labor Surplus Area Set-Aside (see 1-804); or (B) disaster area programs; and

(ii) procurements made in keeping with the small business programs

  (A) after unilateral determinations for set-asides, or

  (B) to place the total or any part of the requirements set aside (unilateral or joint) which are not filled by awards to small business concerns, when no other negotiating authority is appropriate and the use of formal advertising is not feasible and practicable (see 1-706.7).

3-201.3 *Limitation*. The authority of this paragraph 3-201 shall not be used when negotiation is authorized by the provisions of 3-206 except that, in the event of a labor surplus or small business set-aside, this authority shall be used in preference to any other authority in this Part 2 (see 1-706.2 and 1-804.4). The authority of this paragraph shall not be to negotiate a reasonable price with a low responsible small business bidder whose bid has been determined by the contracting officer to be an unreasonable bid under Small Business Restricted Advertising procedures. When such an unreasonable bid is received, the set-aside shall be dissolved and the requirement procured on an unrestricted basis by the use of formal advertising or where appropriate by other negotiation authority in accordance with existing regulations.

3-202 Public Exigency.

3-202.1 *Authority*. Pursuant to the authority of 10 U.S.C. 2304(a)(2) purchases and contracts may be negotiated if—

"the public exigency will not permit the delay incident to advertising."

3-202.2 *Application*. In order for the authority of this paragraph 3-202 to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date, and when they could not be procured by that date by means of formal advertising. When negotiating under this authority, competition to the maximum extent practicable, within the time allowed, shall be obtained. The following are illustrative of circumstances with respect to which this authority may be used:

(i) supplies, services, or construction needed at once because of fire, flood, explosion, or other disaster;

(ii) essential equipment for, or repair to, a ship when such equipment repair is needed at once for compliance with the orders of the ship;

(iii) essential equipment for, or repair to, aircraft grounded or about to be grounded, when such equipment or repair is needed at once for the performance of the operational mission of such aircraft;

(iv) construction needed at once to preserve a structure or its contents from damage;

(v) essential equipment for, or repair to, missiles or missile support equipment, when such equipment or repair is needed at once to preclude impairment of launch capabilities or mission performance;

(vi) purchase requests citing an issue priority designnator under the Uniform Material Movement and Issue Priority System (UMMIPS), which may justify negotiation under this or other negotiation authority, but in such cases the specific circumstances must be set forth in the determination and findings; or

(vii) purchase requests citing "Electronjc Warfare QRC Priority" as the priority designator.

3-202.3 *Limitation*. Every contract negotiated under the authority of this paragraph 3-202 shall be accompanied with a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Part 3 of this Section III. The authority of this paragraph 3-202 shall not be used when negotiation is authorized by the provisions of 3-203 or 3-206.

3-203 Purchases Not More Than $10,000.

3-203.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(3), purchases and contracts may be negotiated if—

"the aggregate amount involved is not more than $10,000."

3-203.2 *Application*. Purchases or contracts aggregating not more than $10,000 shall be made in accordance with Part 6 of this Section, and 18-302 in the case of certain construction contracts.

3-203.3 *Limitation*. The authority of this paragraph 3-203 shall not be used when negotiation is authorized by the provisions of 3-206. However, where small business set asides are made, the appropriate paragraph 3-201.2 (for unilateral set-asides) or 3-217 (for joint class set-asides) shall be cited. When negotiations have been initiated under another provision of this Section, that provision shall be cited as the negotiation authority for any resulting contract, even though one or more contracts of not more than $10,000 in amount may result.

3-204 Personal or Professional Services.

3-204.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(4), purchases and contracts may be negotiated if—

"for personal or professional services."

3-204.2 *Application*. The authority of this paragraph 3-204 shall be used only when all of the following conditions have been satisfied:

(i) if personal services, they are required to be performed by an individual contractor in person (not by a firm), or if professional services, they may be performed either by an individual contractor in person or a firm or organization;

(ii) the services (A) are of a professional nature, or (B) are to be performed under Government supervision and paid for on a time basis; and

(iii) procurement of the services is authorized by law, and is effected in accordance with the requirements of any such law and in accordance with Departmental procedures.

3-204.3 *Limitations*. The authority of this paragraph 3-204, and the above conditions imposed upon its use, shall not apply to the procurement by negotiation of any type of service authorized under any other provision of this Section III.

3-205 Services of Educational Institutions.

3-205.1 *Authority*. Pursuant to the authority of 10 U.S.C. 2304(a)(5), purchases and contracts may be negotiated if—

"for any service by a university, college, or other educational institution".

3-205.2 *Application*. The following are illustrative of circumstances with respect to which the authority of this paragraph 3-205 may be used:

(i) educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith;

(ii) experimental, developmental, or research work (including services, tests, and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution, and reports furnished in connection therewith; or

(iii) analyses, studies, or reports (statistical or otherwise) to be conducted by any university, college, or other educational institution.

3-205.3 *Limitation*. Except as authorized in 22-902(b), the authority of this paragraph 3-205 shall not be used when negotiation is authorized by the provision of 3-203 or 3-206.

3-206 Purchases Outside the United States.

3-206.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(6), purchases and contracts may be negotiated if—

"for property or services to be procured and used outside the
United States, and its Territories, possessions and Puerto Rico."

3-206.2 *Application*. The authority of this paragraph 3-206 shall be used only for the procurement of supplies to be shipped from, delivered, and used, or services to be performed, outside of the United States, its possessions and Puerto Rico, irrespective of the place of negotiation or execution of the contract. When the authority of this paragraph is available for the negotiation of a contract, no other negotiating authority shall be used, nor shall formal advertising be used.

3-207 Medicines or Medical Supplies.

3-207.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(7), purchases and contracts may be negotiated if—

"for medicine or medical supplies".

3-207.2 *Application*. The authority of this paragraph 3-207 shall be used only when the following two requirements have been satisfied:

(i) such supplies are peculiar to the field of medicine, including technical equipment such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like, but not including prosthetic equipment; and

(ii) whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services, under this authority of this paragraph 3-207, for more than $10,000.

3-207.3 *Limitation*. Every contract negotiated under the authority of this paragraph 3-207 shall be accompanied with the determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Part 3 of this Section III. The authority of this paragraph 3-207 shall not be used when negotiation is authorized by the provisions of 3-203 or 3-206.

3-208 Supplies Purchased for Authorized Resale.

3-208.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(8), purchases and contracts may be negotiated if—

"for property for authorized resale".

3-208.2 *Application*.

(a) The authority of this paragraph 3-208 shall be used only for purchases for resale, where appropriated funds are involved, and ordinarily only for purchases of articles with brand names or of a proprietary nature which a selling activity believes or finds to be desired or preferred by its patrons.

(b) Whenever it is determined to be practicable, such advance publicity as is considered suitable with regard to the supplies involved and other relevant considerations shall be given for a period of at least 15 days before making a purchase of or contract for supplies or services, under the authority of this paragraph 3–208, for more than $10,000.

3–208.3 *Limitation*. Every contract negotiated under the authority of this paragraph 3–208 shall be accompanied with the determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirement of Part 3 of this Section III. The authority of this paragraph 3–208 shall not be used when negotiation is authorized by the provisions of 3–203, 3–206, or 3–209.

3–209 Perishable or Nonperishable Subsistence Supplies.

3–209.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(9), purchases and contracts may be negotiated if—

> "for perishable or nonperishable subsistence supplies".

3–209.2 *Application*. The authority of this paragraph 3–209 may be used for the purchase of any and all kinds of perishable or nonperishable subsistence supplies.

3–209.3 *Limitation*. The authority of this paragraph 3–209 shall not be used when negotiation is authorized by the provisions of 3–203 or 3–206.

3–210 Supplies or Services for Which It Is Impracticable to Secure Competition by Formal Advertising.

3–210.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(10), purchases and contracts may be negotiated if—

> "for property or services for which it is impracticable to obtain competition."

3–210.2 *Application*. The following are illustrative of circumstances with respect to which the authority of this paragraph 3–210 may be used:

(i) when supplies or service can be obtained from only one person or firm ("sole source of supply");

(ii) when competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances (however, the mere existence of such rights or circumstances does not in and of itself justify the use of the authority of this paragraph);

(iii) when bids have been solicited pursuant to the requirements of Section II, and no responsive bid (a responsive bid is any bid which conforms to the essential requirements of the solicitation) has been received from a responsible bidder, or when step one of two-step formal advertising results in no acceptable technical proposal or only one acceptable technical proposal;

(iv) when bids have been solicited pursuant to the requirements of Section II, and the responsive bid or bids do not cover the quantitative requirements of the solicitation of bids, in which case negotiation is permitted for the remaining requirements of the solicitation of bids;

(v) when the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services or

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when the contemplated procurement is for construction of a part of a utility system and it would not be practicable to allow a contractor other than the utility company itself to work upon the system;

(vi) when the contemplated procurement is for training film, motion picture productions, or manuscripts;

(vii) when the contemplated procurement is for technical nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature;

(viii) when the contemplated procurement is for studies or surveys other than those which may be negotiated under 3-205 or 3-211;

(ix) when the contemplated procurement involves construction, maintenance, repairs, alterations or inspection, in connection with any one of which the exact nature or amount of the work to be done is not known;

(x) when the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of formal solicitation of bids;

(xi) when the contemplated procurement is for commercial transportation, including time, space, trip, and voyage charters, except for such transportation services as are furnished by common carriers (for which negotiation is authorized under 3-217, and Section 321 of the Transportation Act of 1940, 49 U.S.C. 65), and including services for the operation of Government-owned vehicles, vessels or aircraft;

(xii) when the contract is for services related to the procurement of perishable subsistence such as protective storage, icing, processing, packaging, handling, and transportation, whenever it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence;

(xiii) when it is impossible to draft, for a solicitation of bids, adequate specifications or any other adequately detailed description of the required supplies or services;

(xiv) when, under the procedures set forth in Joint Regulation DoD 4500.34-R, the contract is for storage (and related services) of household goods;

(xv) when the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part or component it is to replace;

(xvi) when the contract is a facilities contract as defined in 13-101.11 and the performance required can be obtained from only one person or firm;

(xvii) when the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site or when the amount is too small to interest other contractors to mobilize and demobilize; or

(xviii) when the contemplated procurement is to be reimbursed by a foreign country which requires that the product be obtained from a particular firm as specified in the Letter of Agreement or other written direction by the Military Sales Organization (see 6-1307(a)).

3-210.3 *Limitation*. The authority of this paragraph 3-210 shall not be used when negotiation is authorized by any other authority set forth in 3-201 through 3-217, except that this authority shall be used in preference to 3-212 and in procurements for foreign military sales described in 3-210.2(xviii). The authority illustrated in 3-210.2(iii) and (iv) shall not be used in cases where "Small Business Restricted Advertising" has been used. However, the authority may be used in the case of partial set-asides unless in the judgment of the contracting officer the failure to obtain sufficient responsive bids was caused by the existence of the set-aside. Every contract that is negotiated under the authority of this paragraph 3-210 shall be accompanied with a determination and findings justifying its use, signed by the contracting officer and prepared in accordance with the requirements of Part 3 of this Section III.

3-211 Experimental, Developmental, or Research Work.

3-211.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(11), purchases and contracts may be negotiated if—

> "for property or services that he [the Secretary] determines to be for experimental, developmental or research work, or for making or furnishing property for experiment, test, development, or research".

3-211.2 *Application*. The following are illustrative of circumstances with respect to which the authority of this paragraph 3-211 may be used:

(i) contracts relating to theoretical analysis, exploratory studies and experiment in any field of science or technology;

(ii) developmental contracts calling for the practical application of investigative findings and theories of a scientific or technical nature;

(iii) contracts for such quantities and kinds of equipment, supplies, parts, accessories, or patent rights thereto, and drawings or designs thereof, as are necessary for experiment, development, research or test; or

(iv) contracts for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

3-211.3 *Limitation*. The authority of this paragraph 3-211 shall not be used for negotiated contracts with educational institutions or for quantity production, except that such quantities may be purchased hereunder as are necessary to permit complete and adequate experiment, development, research, or test; accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production. Negotiated contracts with educational institutions shall be negotiated in accordance with 3-205. The authority of this paragraph 3-211 shall not be used when negotiation is authorized by the provisions of 3-203 or 3-206. In order for this authority to be used, the required determination must be made in accordance with the requirements of Part 3 of this Section III.

3-211.4 *Records and Reports.* Each Department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this paragraph 3-211, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in 1-110 and Section XXI, Part 1.

3-212 Classified Purchases.

3-212.1 *Authority.* Pursuant to 10 U.S.C. 2304(a)(12), purchases and contracts may be negotiated if—

> "for property or services whose procurement he [the Secretary] determines should not be publicly disclosed because of their character, ingredients, or components".

3-212.2 *Application.* The authority of this paragraph 3-212 may be used for purchases or contracts classified "Confidential" or higher, or where because of other considerations, the contract should not be publicly disclosed.

3-212.3 *Limitation.* In order for the authority of this paragraph 3-212 to be used, the required determination must be made in accordance with the requirements of Part 3 of this Section III. The authority of this paragraph 3-212 shall not be used when negotiation is authorized by any other authority set forth in 3-201 through 3-217, except as otherwise provided in 3-204.3.

3-213 Technical Equipment Requiring Standardization and Interchangeability of Parts.

3-213.1 *Authority.* Pursuant to 10 U.S.C. 2304(a)(13), purchases and contracts may be negotiated if—

> "for equipment that he [the Secretary] determines to be technical equipment whose standardization and the interchangeability of whose parts are necessary in the public interest and whose procurement by negotiation is necessary to assure that standardization and interchangeability;".

3-213.2 *Application.*

(a) The authority of this paragraph 3-213 may be used for procuring additional units and replacement items of specified makes and models of technical equipment and parts, which are either: (i) for forces whose primary mission is to participate in combat and the integral supporting elements thereof, or (ii) an integral part of or used in direct support of a weapons system, or (iii) for use in Alaska, Hawaii or outside the remainder of the United States, in theaters of operations, on board naval vessels, or at advanced or detached bases; and which have been adopted as standard items of supply in accordance with procedures prescribed by each respective Department. A current or recurring procurement requirement for the item shall be present.

(b) This authority would apply, for example, whenever it is necessary:

- (i) to limit the variety and quantity of parts that must be carried in stock;
- (ii) to make possible, by standardization, the availability of parts that may be interchanged among items of damaged equipment during combat or other emergency;

(iii) to procure from selected suppliers technical equipment which is available from a number of suppliers but which would have such varying performance or design characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts; or

(iv) to provide a uniform configuration of equipment for material programmed for a Military Assistance Program (MAP) Country or Countries.

(c) Before making a determination to procure specified makes and models under the authority of this paragraph 3-213, consideration shall be given to whether:

(i) it is feasible, from an economical and timely deployment standpoint, to distribute or redistribute the equipment and parts already in the supply system on a selected geographic basis;

(ii) it is practicable or economical to use or develop a military design which would permit standardization of components and parts under the Defense Standardization Program;

(iii) standardization will impair the capability of industry to produce mobilization requirements of all Departments;

(iv) it is practicable to satisfy the requirement by interchanging parts and cannibalizing equipment already in the system;

(v) future procurement of the selected item of equipment can be effected at reasonable prices;

(vi) standardization will serve to reduce or prevent an increase in the variety of parts that must be carried in stock;

(vii) standardization will render obsolete large dollar value inventories of equipment and supporting parts already in the supply system without compensating benefits;

(viii) standardization will enhance military mission capability;

(ix) savings in training personnel or procuring technical literature will accrue;

(x) standardization will adversely affect existing coordinated military specifications and standards;

(xi) the current design of the specified make and model to be standardized has been changed from the design of equipment of the same make and model now in the supply system; and whether requirement exists for design changes of a scope which would negate the benefits contemplated from this standardization action; and

(xii) in cases when military mission capability is not overriding, the anticipated benefits and/or cost savings from standardization will equal or exceed the expected benefits and/or cost savings which would be obtained through unrestricted competition.

(d) In arriving at determinations to standardize under the authority of this paragraph 3-213, the originating Department shall consult with other user Departments as applicable, in order to insure the full benefit of the action.

(e) The period of standardization, not to exceed 6 years, shall be commensurate with the useful life of the property proposed for standardization and the anticipated rate of change in design and interchangeability of components. Actions taken under the authority of this paragraph 3-213 shall be recorded and reviewed by the originating Department at a level designated by the approving authority, at least once every two years to determine whether the standardization should be continued, revised, or canceled. The redesign or redesignation of a model which has been standardized will not require revision or cancellation of standardization approval if interchangeability of parts of the new model with those of the model standardized is not affected in any significant respect.

3-213.3 *Limitation.* The authority of this paragraph 3-213 shall not be used (i) for initial procurements of equipment and parts; (ii) or for the purpose of selecting arbitrarily the equipment and parts of certain suppliers; nor shall it be used unless the Secretary of a Department has determined, in accordance with the requirements of Part 3 of this Section III that: (A) the equipment constitutes technical equipment; (B) standardization of such equipment and interchangeability of its parts are necessary in the public interest; and (C) procurement of such equipment or of its parts by negotiation is necessary to assure that standardization and interchangeability.

3-213.4 *Notice of Intent to Standardize.* In procurements of technical equipment and parts for applications specified in 3-213.2(a), when a Department expects that the equipment will be established as standard and that maintenance of such standardization can be secured only by subsequent negotiation, the provision in 7-2003.38 may be inserted in the initial solicitation. Prior approval of the Chief of the Purchasing Office shall be obtained.

3-213.5 *Records and Reports.* Each Department shall maintain on a current basis, a master list of items for which determinations and findings have been made under the authority of this paragraph 3-213.

3-214 Technical or Specialized Supplies Requiring Substantial Initial Investment or Extended Period of Preparation for Manufacture.

3-214.1 *Authority.* Pursuant to 10 U.S.C. 2304(a)(14), purchases and contracts may be negotiated if—

> "for technical or special property that he [the Secretary] determines to require a substantial initial investment or an extended period of preparation for manufacture and for which he determines that formal advertising would be likely to result in additional cost to the Government by reason of duplication of investment or would result in duplication of necessary preparation which would unduly delay the procurement of the property".

3-214.2 *Application.* The authority of this paragraph 3-214 may be used for the procurement of technical or specialized supplies—for example: aircraft, tanks, radar, guided missiles, rockets, and similar items of equipment; major components of any of the foregoing; and any supplies of a technical or specialized nature which may be necessary for the use or operation of any of the foregoing. Such procurement generally involves:

(i) high starting costs which already have been paid for by the Government or by the supplier;
(ii) preliminary engineering and development work that would not be useful to or usable by any other supplier;
(iii) elaborate special tooling already acquired;

(iv) substantial time and effort already expended in developing a prototype or an initial production model; and

(v) important design changes which will continue to be developed by the supplier.

The authority of this paragraph 3-214 will, in general, be used in situations where it is preferable to place a production contract with the supplier who had developed the equipment, and thereby either assure to the Government the benefit of the techniques, tooling, and equipment already acquired by that supplier, or avoid undue delay arising from a new supplier having to acquire such techniques, tooling, and equipment. However, this exception should not be used to avoid duplication of private investment unless this duplication would be likely to result in additional cost to the Government.

3-214.3 *Limitation*. The authority of this paragraph 3-214 shall not be used unless and until the Secretary has determined, in accordance with the requirements of Part 3 of this Section III, that:

(i) the supplies are of a technical or special nature requiring a substantial initial investment or an extended period of preparation for manufacture; and

(ii) procurement by formal advertising either—

(A) would be likely to result in additional cost to the Government by reason of duplication of investment, or

(B) would result in duplication of necessary preparation which would unduly delay the procurement.

3-215 Negotiation After Advertising.

3-215.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(15), purchases and contracts may be negotiated if—

"for property or services for which he [the Secretary] determines that the bid prices received after formal advertising are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which (A) he has notified each responsible bidder of intention to negotiate and given him reasonable opportunity to negotiate; (B) the negotiated price is lower than the lowest rejected bid of any responsible bidder, as determined by the head of the agency; and (C) the negotiated price is the lowest negotiated price offered by any responsible supplier".

3-215.2 *Limitation*. The authority of this paragraph 3-215 shall not be used unless the Secretary has determined, in accordance with the requirements of Part 3 of this Section III, that the bid prices, after formal advertising for such supplies or services, are unreasonable or were not independently reached in open competition. Also, after such determination by the Secretary and after rejection of all bids, no contract shall be negotiated under this authority unless:

(i) prior notice of intention to negotiate and a reasonable opportunity to negotiate have been given by a contracting officer to each responsible bidder which submitted a bid in response to the invitation for bids;

(ii) the negotiated price is lower than the lowest rejected bid price of a responsible bidder, as determined by the Secretary; and

(iii) the negotiated price is the lowest negotiated price offered by any responsible supplier.

BEST DOCUMENT AVAILABLE

Moreover any evidence of bids not independently reached shall be forwarded to the Department of Justice, as provided in 1-111.

3-216 Purchases in the Interest of National Defense or Industrial Mobilization.

3-216.1 *Authority.* Pursuant to 10 U.S.C. 2304(a)(16), purchases and contracts may be negotiated if—

> "he [the Secretary] determines that (A) it is in the interest of national defense to have a plant, mine, or other facility, or a producer, manufacturer, or other supplier, available for furnishing property or services in case of a national emergency; or (B) the interest of industrial mobilization in case of such an emergency, or the interest of national defense in maintaining active engineering, research, and development, would otherwise be subserved".

3-216.2 *Application.* The authority of this paragraph 3-216 may be used to implement plans and programs developed under the direction of the Secretary to provide an industrial mobilization base which can meet production requirements for essential military supplies and services. The following are examples of situations when use of this authority should be considered:

(i) when procurement by negotiation is necessary to keep vital facilities or suppliers in business; or to make them available in the event of a national emergency;

(ii) when procurement by negotiation with selected suppliers is necessary to train them in the furnishing of critical supplies or services, to prevent the loss of their ability and employee skills, or to maintain active engineering, research, and development work; or

(iii) when procurement by negotiation is necessary to maintain properly balanced sources of supply for meeting the requirements of procurement programs in the interest of industrial mobilization; (*When the quantity required is substantially larger than the quantity which must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will ordinarily be procured by formal advertising or by negotiation under another negotiation exception.*)

(iv) when procurement by negotiation is necessary to limit competition for current procurements of selected supplies or services which are approved for production planning under the Industrial Preparedness Program only to planned producers with whom industrial preparedness agreements for those items exist; or to limit award to offerors who agree to enter into industrial preparedness agreements;

(v) when procurement by negotiation is necessary to create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or the United States and Canada; (It is not necessary to use this negotiation authority when procuring items covered by 1-2207.)

(vi) when procurement by negotiation is necessary to continue in production contractors who are manufacturing critical items when there would otherwise be a break in production;

(vii) when procurement by negotiation is necessary to divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

3-216.3 *Limitation*. The authority of this paragraph 3-216 shall not be used unless and until the Secretary has determined, in accordance with the requirements of Part 3 of this Section III, that:

(i) it is in the interest of national defense to have a particular plant, mine, or other facility or a particular producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, and negotiation is necessary to that end;

(ii) the interest of industrial mobilization, in case of a national emergency would be subserved by negotiation with a particular supplier; or

(iii) the interest of national defense in maintaining active engineering, research, and development, would be subserved by negotiation with a particular supplier.

3-216.4 *Records and Reports*. Each Department is required to maintain a record of the name of each contractor with whom a contract has been entered into pursuant to the authority of this paragraph 3-216, together with the amount of the contract and (with due consideration given to the national security) a description of the work required to be performed thereunder. These records, and reports based thereon, are maintained through the Department of Defense procurement reporting system described in 1-110 and Section XXI, Part 1.

3-217 Otherwise Authorized by Law.

3-217.1 *Authority*. Pursuant to 10 U.S.C. 2304(a)(17), purchases and contracts may be negotiated if—

"otherwise authorized by law."

3-217.2 *Application*. The authority of this paragraph 3-217 shall be used only if, and to the extent, approved for any Department and in accordance with Departmental procedures.

PROCUREMENT BY NEGOTIATION

Part 3—Determinations and Findings

3-300 Scope of Part. This Part enumerates the particular Determinations and Findings (D&Fs) to be made (i) by the Secretary of any Department, (ii) by the Head of a Procuring Activity signing as "a chief officer responsible for procurement," and (iii) by a contracting officer; and sets forth the requirements to be followed with respect to such D&Fs. Guidance for the preparation of a justification for negotiation in support of a D&F and sample formats are set forth in Appendix J. The format for a D&F for advance payments is set forth in E-410.

3-301 Nature of Determinations and Findings.

(a) The determinations and supporting findings that are referred to throughout this Section are documents which justify the use of the authority to (i) enter into contracts by negotiation, (ii) make advance payments under negotiated contracts, (iii) determine the type of contract to be used, or (iv) to waive a requirement for submission of cost or pricing data and certification thereof.

(b) A D&F constitutes a special form of approval required by statute or regulation as a prerequisite to the taking of certain action. While the contracting officer is responsible for preparing the D&F, requirements and technical personnel are responsible for the accuracy and adequacy of the factual information supporting the findings. Supporting information within the functional areas of requirements and technical personnel shall be furnished the contracting officer in writing. The findings are statements of fact or reasoning essential to support the determination. They must cover each requisite of the statute or regulation to support the determination and must be consistent with the determination. The determination is a conclusion based on the findings; it shall be stated in conformity with the statute or regulation.

(c) A D&F shall ordinarily be made only with respect to individual purchases or contracts. However, except as limited by 3-303, a class D&F may be used for a specified period only to authorize negotiation of two or more contracts for supplies or services of the same or related type. Such use is appropriate when the proposed procurements all require essentially identical justification under the same negotiation exception. Class D&Fs shall not, however, be construed to authorize the procurement by negotiation of supplies or services within the class which feasibly and practicably could be procured through formal advertising (see 1-300.2).

(d) The authority to negotiate granted by a D&F is limited to the procurement which is reasonably and fairly described in the D&F. Each Department may provide for a reasonable degree of flexibility, however, in the application of an approved D&F to quantities and estimated cost, if such flexibility is not inconsistent with the negotiating authority involved. For example, if at the time a D&F is submitted for approval, historical evidence indicates the possibility of increased quantities, *e.g.*, requirements of other Departments, and Military Assistance Program requirements, at the time of negotiation, the supporting data and the D&F may provide for limited additional quantities. Similarly, a provision may be included authorizing increased quantities if negotiations reveal that additional quantities can be procured under the approved program and within available funds. A superseding D&F shall be without prejudice to any action taken under the original D&F.

(e) When an option provision in the contract is contemplated, the D&F shall set forth the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

(f) D&Fs shall be dated at the time of signature.

(g) The authority to act under a D&F expires when the authority granted thereunder is exercised or on a specified expiration date, whichever first occurs. When the request for proposals or for quotations has been furnished to the prospective contractor prior to the expiration of the authority under the D&Fs, such authority will continue until award of the contract(s) resulting from that solicitation.

3-302 Determinations and Findings by the Secretary of a Department. The following determinations, and written findings in support thereof, may be made only by the Secretary of a Department and not delegated hereunder except to the extent provided in (i), (vii), and (viii) below:

(i) the determination required by 3-211 with respect to any negotiated contract for experimental, developmental, or research work, or for the manufacture or furnishing of supplies for experimentation, development, research, or test (but see 3-303(a)(ii) when the amount does not exceed $5 million);

(ii) the determination required by 3-212 with respect to any negotiated contract that should not be publicly disclosed;

(iii) the determination required by 3-213 with respect to any negotiated contract for technical equipment requiring standardization and interchangeability of parts;

(iv) the determination required by 3-214 with respect to any negotiated contract for technical or specialized supplies requiring a substantial initial investment or an extended period of preparation for manufacture;

(v) the determination required by 3-215 with respect to any negotiated contract entered into after advertising has proved unsatisfactory;

(vi) the determination required by 3-216 with respect to any negotiated contract entered into in the interest of national defense or industrial mobilization;

(vii) the determination required with respect to advance payments under any negotiated contract (but see Defense Contract Financing Regulations, Part 4, Appendix E); and

(viii) the determinations required with respect to waiving a requirement for submission of cost or pricing data and certification thereof (see 3-807.3(b)) and for inclusion of the clauses required by 7-104.29 and 7-104.42 (but see 3-303(a)(i) for contracts with foreign governments or agencies thereof).

In addition to the foregoing determinations, the Secretary of any Department may also make any of the determinations, and written findings in support thereof, that may be made by the Head of any Procuring Activity signing as a chief officer responsible for procurement or by a contracting officer.

3-303 Determinations and Findings Below the Secretarial Level.

(a) Determinations, and findings in support thereof, not required to be made by higher authority including those in (i) through (iv) below may be made with respect to individual purchases or contracts by the Head of a Procuring Activity signing as a chief officer responsible for procurement. Unless his authority is limited by higher authority, the contracting officer may make the determinations and findings in (ii) through (iv) with respect to individual purchases and contracts:

(i) the determination required with respect to waiving the requirements for submission of cost or pricing data and certification thereof and for the inclusion of the clauses required by 7-104.29 and 7-104.42 for contracts with foreign governments or agencies thereof;

(ii) determinations and findings with respect to authority to enter into contracts by negotiation required by 3-202.3, 3-207.3, 3-208.3, 3-210.3 and 3-211.3; *provided*, that under 3-211.3 the basic contract or any single modification thereto does not obligate the Government to pay more than $5 million (in a procurement under 3-211, where it is known in advance that the scope of the contract will be expanded to include additional phases or where it is incrementally funded, the total estimated cost of all increments will be used as the basis for determining whether a determinations and finding will be made at the Secretarial level or by the contracting officer);

(iii) determinations and findings with respect to the use of a cost or a cost-plus-a-fixed-fee or an incentive-type contract required by 3-404.4, 3-405, 3-405.4, and 3-405.6; and

(iv) any other determinations and findings not required to be made by higher authority.

(b) The authority to make class determinations and findings with respect to authority to enter into contracts by negotiation pursuant to 3-202, 3-207, 3-208, and 3-210 may be delegated by the Secretary of any Department.

3-304 Reserved.

3-305 Formats for Determinations and Findings. A D&F with respect to (i) negotiation of an individual contract or a class of contracts, (ii) the type of contract to be used, or (iii) waiving a requirement for submission of cost or pricing data and certification thereof, should conform generally to the appropriate format set forth in Appendix J. A D&F for advance payments should be prepared in accordance with the format in E-410. A D&F for any other purpose shall be prepared in accordance with Departmental procedures. Each determination and findings shall set out enough facts and circumstances to justify clearly the specific determination made. Each determination and findings for authority to negotiate either an individual contract or a class of contracts shall clearly and convincingly establish that the use of formal advertising would not be feasible and practicable.

3-306 Procedure With Respect to Determinations and Findings.

(a) Determinations and findings for authority to negotiate required by 3-202, 3-207, 3-208, and 3-210 through 3-216 shall be signed by the appropriate official prior to issuance of a request for proposals or quotations. Any modifications of such Determinations and Findings subsequently found to be necessary will not require cancellation of the request for proposals or quotations, provided the

Determinations and Findings as modified support negotiation under any one of the authorities cited in 3–201 through 3–217. Where the facts continue to support the negotiation but under an exception for which a Determination and Findings is not required, cancellation of the Determination and Findings will not require cancellation of the request for proposals or quotations.

(b) Each Determination and Findings shall be approved and processed in accordance with procedures prescribed by each respective Department, except that Determinations and Findings for procurement by negotiation with respect to coordinated procurement (5–1101.1) shall be made in accordance with 5–1106.3.

3–307 Reserved.

3–308 Retention of Copies of Determinations and Findings. Executed originals of all determinations and findings, and copies of all supporting documents, shall be preserved in the cognizant procuring activity or in the Department concerned for six years following the date of each respective determination.

Part 4—Types of Contracts

3-401 Basic Principles for Use of Contract Types.

(a) *General.*

(1) To provide the flexibility needed in the purchase of the large variety and volume of military supplies and services, a wide selection of types of contracts is available to the contracting parties. The respective contract types vary as to (i) the degree and timing of responsibility assumed by the contractor for the costs of performance, and (ii) the amount and type of profit incentive offered the contractor to achieve or exceed specified standards or goals. With regard to degree of cost responsibility, the various types of contracts may be arranged in order of decreasing contractor responsibility for the costs of performance. At one end is the firm fixed-price contract under which the parties agree that the contractor assumes full cost responsibility. At the other end of this range is the cost-plus-a-fixed-fee contract where profit, rather than price, is fixed and the contractor's cost responsibility is therefore minimal. In between are the various incentive contracts which provide for varying degrees of contractor cost responsibility, depending upon the degree of uncertainty involved in contract performance. The specific type of contract should be determined by the degree of risk in contract performance. When the risk is minimal or can be predicted with an acceptable degree of certainty, a firm fixed-price contract is preferred. However, as the uncertainties become more significant, other fixed price or cost type contracts should be employed to accommodate these uncertainties and to avoid placing too great a cost risk on the contractor.

(2) Pursuant to the authority of 10 U.S.C. 2306, a contract negotiated under this Section III may be of any type or combination of types described herein which will promote the best interests of the Government, subject to the restrictions described below. Types of contracts not described herein shall not be used, unless pursuant to a deviation under 1-109. The cost-plus-a-percentage-of-cost system of contracting shall not be used. Accordingly, all prime contracts (including letter contracts) on other than a firm fixed-price basis shall prohibit cost-plus-a-percentage-of-cost subcontracts by an appropriate clause.

(b) *The Role of Profit.*

(1) Profit, generally, is the basic motive of business enterprise. Both the Government and its defense contractors should be concerned with harnessing this motive to work for the effective and economical contract performance required in the interest of national defense. To this end, the parties should seek to negotiate and use the contract type best calculated to stimulate outstanding performance. The objective should be to insure that outstandingly effective and economical performance is met by high profits, mediocre performance by mediocre profits, and poor performance by low profits or losses. The proper application of these objectives on a contract by contract basis should normally result in a range of profit rates.

(2) Success in harnessing the profit motive begins with the negotiation of sound performance goals and standards. This objective is met if the contractor either benefits or loses in relation to achieving or failing to achieve realistic targets. When award is based on effective price competition, there is reasonable as-

surance that the contract price represents a realistic pricing standard, including a profit factor which reflects an appropriate return to the contractor for the financial risk assumed in undertaking performance at the competitive price. In the absence of competitive forces, however, the contract type selected should provide for a profit factor that will tie profits to the contractor's efficiency in controlling costs and meeting desired standards of performance, reliability, quality, and delivery. Therefore, in noncompetitive situations, the degree to which available cost estimates are realistic, and the degree of uncertainty affecting the work to be performed, should be carefully considered in determining which type of contract should be selected and how it should be used.

(3) The policies in (1) and (2) above require that the contractor assume a reasonable degree of cost responsibility as early in contract performance as is possible. This can be achieved only through vigorous contract administration and effort on the part of both parties to assure timely pricing. Particularly in fixed-price type contracts providing for price revisions, delays in pricing actions by either party may distort the type of contract which has been agreed upon and such delays must be avoided.

(4) When a contract type providing for a reasonable degree of contractor cost responsibility cannot be negotiated on a timely basis, due to the contractor's unwillingness to assume reasonable risk, profits should be negotiated so as to reflect this fact (see 3–808).

(5) Notwithstanding the validity of profit as a motivating factor in general, there are situations, particularly in the early stages of research and development, in which the profit motive may be secondary. Harnessing the profit motive at the early stages of such procurements may not be effective or desirable in view of the high degree of technical and cost risk associated with performance or consistent with achieving desired technical objectives. The contracting officer's objective should still be "effective and economical performance," but the relative weight of these factors must be kept in balance. (see 3–402(b).) Of course, outstanding performance can still be rewarded under a research and development contract, by proper application of incentive techniques.

(6) The firm fixed-price contract is the most preferred type for harnessing the profit motive because the contractor accepts full cost responsibility, and the relationship between cost control and profit dollars is established at the outset of the contract. Accordingly, when a reasonable basis for firm pricing exists (see 3–404.2), the firm fixed-price contract shall be used, because its use under these circumstances will provide the contractor with a maximum profit incentive to control the costs of performance. However, the contracting officer must be alert to the fact that in certain situations the use of special contract incentive provisions may be more appropriate. While maximum incentive to a contractor exists in a firm fixed-price contract, the basis for the application of firm fixed-price is the knowledge that the price has been arrived at either through competition or through sound pricing techniques which keep pricing uncertainties to a minimum. When contracting for research and development, or when price competition is not present, and (i) when the cost or pricing data available does not permit sufficiently realistic estimates of the probable cost of performance, or (ii) uncertainties surrounding the contract performance cannot be sufficiently identified to

evaluate their impact on price, the use of a type of contract other than firm fixed-price should be considered. For example, a profit incentive to control costs can be achieved through use of the fixed-price incentive contract, and to a lesser degree, the cost-plus-incentive-fee contract, when appropriate target costs and incentive arrangements can be negotiated.

3–402 Negotiation of Contract Type.

(a) *General.* The selection of contract type is generally a matter for negotiation and requires the exercise of judgment. Type of contract and pricing are interrelated and should be considered together in negotiation in accordance with 3–803. Because the type of contract should reflect the degree of risk to both the contractor and the Government, use of an appropriate type is of primary importance. Each contract file shall include documentation to show why the particular contract type was used, except for the following:

(i) small purchases (Part 6 of this Section III);

(ii) repetitive types of procurement usually accomplished on a firm fixed-price basis, such as subsistence procurement; or

(iii) awards made on the set-aside portion of formally advertised procurement partially set aside for either small business, labor surplus or disaster areas.

Although no absolute rules can be laid down, there are many factors which should be considered in the use of an appropriate type of contract, including those which follow.

(1) *Price Analysis.* See 3–807.2(a). Price analysis may provide a basis for selection of contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered, even where there may not be full and free competition. |

(2) *The Cost Estimate.* In the absence of effective price competition and where price analysis is not sufficient, the cost estimates of the offeror and of the Government are the bases for negotiation of many pricing arrangements. As a minimum, the uncertainties involved in performing at the cost estimated, and their possible impact on costs, must be identified and evaluated so that a pricing arrangement can be negotiated which imposes a reasonable degree of cost responsibility upon the contractor. The following are some of the considerations which may influence the estimate and hence, the selection of contract type:

(i) type and complexity of the item;

(ii) stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience;

(iii) prospective period of contract performance and length of production run at the time of negotiation;

(iv) extent and nature of subcontracting contemplated; and

(v) adequacy of the contractor's estimating system.

(3) *Urgency of the Requirement.* In certain procurements the best interests of the Government may dictate that the urgency of the requirement be a primary consideration in selection of contract type.

(4) *Technical Capability and Financial Responsibility of the Contractor.*

(5) *Adequacy of the Contractor's Accounting System.* Before reaching agreement on price and contract type, determination should be made that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated. This may be particularly critical where the contract type requires revision of price while performance is in progress, or where a cost-reimbursement type of contract is being considered and all current or past experience with the contractor has been on a fixed-price basis (see 3–809).

(6) *Other Concurrent Contracts.* If performance under a proposed procurement involves operations which concurrently are required in performance of other work, the nature of the pricing arrangements on the other work may be important in selecting the contract type for the proposed procurement. This factor may not be so important where close controls exist that will assure proper allocation of costs.

(b) *Research and Development (R&D).* The selection of the appropriate contract type is, in the final analysis, the responsibility of the contracting officer. However, because of the importance of technical considerations at the R&D stage, the choice of contract type shall not be made without obtaining the recommendations of cognizant technical personnel. Generally, the selection of contract type should also be discussed with prospective contractors. Where appropriate, R&D solicitations should permit prospective contractors to propose an alternative contract type. Any counterproposal must be supported by the contractor's rationale for his choice. The contracting officer shall include a statement in the file, setting forth his rationale for the type of contract ultimately selected. The categories of Research, Exploratory Development, Advanced Development, Engineering Development and Operational Systems Development (see 4–101), represent the spectrum of the R&D cycle and were so designated to provide an appropriate breakdown of R&D effort for management purposes. Each category has a prime technical or functional objective and certain distinctive features. It should not be inferred, however, that each category is a discrete step in the R&D process with a clear beginning and end entirely separate and distinct each from the other. In the latter categories of development, it is possible for different parts of a project to fit several different category definitions. Thus, a project properly categorized as Engineering Development may include subsystem work or elements of work that are, because of their particular technical state of development, truly Advanced Development, or in rare cases, even Exploratory Development. Again, the contract must be selected to fit the work required, not selected solely on the basis of the classification of the overall program.

(i) *Research and Exploratory Development.* The categories of Research and Exploratory Development form a logical grouping of the R&D process at one end of the spectrum. In Research and Exploratory Development contracting, the nature of the work, the usual lack of definitive requirements, the inability to measure technical objectives, the inability to measure risk, the amount of government technical direction and control desired, the lack of competition, and whether the contractor will be an educational institution, commercial company, or a not-for-profit organization, may be primary considerations in choosing the type of contract. Price is not necessarily the primary factor in determining the contract type. While no restriction exists on the type of contract which may be used, the nature of the work in these categories most frequently necessitates the negotiation of a CPAF, CPFF term, cost-no-fee, or cost-sharing contract. In cases where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price level of effort contract may be appropriate. Incentive type contracts should not be used unless the contractor and Government agree that an incentive arrangement is desirable, can be effective, and, upon completion, can be evaluated in terms of the incentives.

(ii) *Advanced Development.* The primary objective of Advanced Development is to determine and demonstrate, experimentally, the acceptability of the technical, economic, logistic and operational characteristics of one or more advanced concepts considered suitable for solution of a clearly stated military problem or technical objective. Advanced development provides the development effort which couples the inventory of science, technological and feasibility concepts derived from research and exploratory development to the end use oriented engineering and operational system developments. Included in this is the experimental demonstration of advanced technologies, equipment, subsystems, or systems, as well as the study, design, development, test and evaluation of advanced or innovated hardware, equipment or instrumentation necessary to provide a basis for selection among alternatives. It includes systems analyses trade-off studies, cost effectiveness analyses and particularly exploratory technological effort directly responsive to the objectives of the specific advanced development. Further, it includes conceptual effort required to generate the information to satisfy the prerequisites to initiation of system development wherein advanced development efforts are aimed at risk reduction and providing feasibility — often referred to as the validation phase or prototype phase. It is in this category that the first significant hardware for test is developed. In this broad category of work, selection of the best contract type should be made only after careful identification of the specific nature of the work required. No restriction exists as to the type of contract that may be used for work in this category. The nature of the work, however, often necessitates the use of CPFF completion type contracts. Incentive contracts can be effectively used in this category when realistic, measurable targets can be identified and program success can be predicted with a reasonable degree of accuracy. Contracts with only cost incentive should not be used in procurement where, at the outset, it can be expected that there will be a large number of major technical changes in the project or where actions beyond the control of the contractor may influence the just determination of the contractor's achievement. Competition may be used in these efforts for risk reduction, design innovation and cost reduction.

(iii) *Engineering Development and Operational Systems Development*. Engineering and Operational Systems Development, because of many similarities, form a logical grouping in the spectrum of R&D categories. These categories, the ultimate aim of which is production and development, include all effort the primary objective of which is the engineering design and final engineering demonstration of the technical, economic, logistic and operational characteristics of an experimentally feasible and acceptable system, equipment, subsystem, component or process judged to be the optimum solution to clearly stated military problems or technical objectives. In Engineering Development, such effort is founded on the probability of eventual procurement for inventory and use, and, therefore, includes effort leading to the demonstration of acceptability for such procurement. Operational Systems Development effort has the primary objectives of producibility demonstration and R&D support of final service test of the logical and operational development of an acceptable system, equipment, subsystem or component, approved for procurement and operational deployment or otherwise specifically approved for inclusion in this category. It may include the building of one or more production prototypes utilizing all processes, tooling, and test equipment considered for the production process thereby constituting a demonstration and qualification of the production process. Even when the overall project is in Engineering or Operational System Development, there may be integral supporting tasks that are still in the Advanced Development stage and the contract type for these tasks should be selected accordingly. The type of contract selected should be decided on the basis of major factors such as: (A) the definitiveness of the project at this stage and its bearing on the accuracy of cost estimates; (B) the completion schedule required for satisfactory operational deployment; (C) the degree of risk and uncertainty expected; (D) the ability to establish meaningful and measurable incentives; (E) the need for effort overlapping that of earlier development stages; (F) the desirability of firm technical direction by the Government, and (G) the degree of configuration control to be exercised. Any one or combination of these factors could have a direct bearing on the type of contract selected. Cost reimbursement type contracts are preferred for all development efforts and particularly for major defense systems. When risk has been reduced to the extent that realistic pricing can occur, fixed price type contracts should be used, e.g., when a program has reached the final stages of development and technical risks are minimal. The use of letter contracts shall be minimized.

3–403 Reserved.

3–404 Fixed-Price Contracts.

3–404.1 *General*. Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances. The fixed-price type contracts provide for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. In providing for an adjustable price, the contract may fix a ceiling price or target price (including target cost). Unless otherwise provided in the contract, any such ceiling or target price is subject to adjustment only if required by the operation of any contract clause which provides for equitable adjustment, economic price adjustment, or other revision of the contract price upon the occurrence of an event or a contingency.

3–404.2 *Firm Fixed-Price Contract.*

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth below, places maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the firm fixed price, he has a maximum profit incentive for effective cost control and contract performance. Use of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Application.* The firm fixed-price contract is suitable for use in procurements when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset, such as where:

(i) adequate competition has made initial proposals effective;
(ii) prior purchases of the same or similar supplies or services under competitive conditions, or supported by valid cost or pricing data, provide reasonable price comparisons;
(iii) cost or pricing information is available permitting the development of realistic estimates of the probable costs of performance;
(iv) the uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risks involved; or
(v) any other reasonable basis for pricing can be used consistent with the purpose of this type of contract.

The firm fixed-price contract is particularly suitable in the purchase of standard or modified commercial items, or military items for which sound prices can be developed.

3–404.3 *Fixed-Price Contract With Economic Price Adjustment.*

(a) *General.* The fixed price contract with economic price adjustment may be used under the applicable conditions set forth in this paragraph when the contracting officer determines that price adjustment provisions are necessary either to protect the contractor and the Government against significant economic fluctuations in labor or material costs or to provide for contract price adjustments in the event of changes in the contractor's established prices. The economic price adjustment provisions are designed to provide for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. In the establishment of the base levels from which adjustment will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that adjustment is provided for any particular contingency. Use of this type of contract is appropriate when serious doubt exists as to the stability of market or labor conditions which will exist during an extended period of contract performance and when contingencies which would otherwise be included in the contract price can be identified and covered separately by a price adjustment clause. Price adjustments based on established prices should normally be restricted to industry wide contingencies and price adjustments based on labor or material costs should be limited to contingencies beyond the control of the contractor.

(b) *Description*. Generally economic price adjustment provisions are of three broad types:

(1) *Adjustment Based on Established Prices*. Price adjustments are based on an increase or decrease from an agreed upon level in published or established prices of either specific items or price levels of contract end items.

(2) *Adjustment Based on Labor or Material Costs* (*Actual Costs Method*). Price adjustments are based on an increase or decrease in specified costs of labor or material actually experienced by the contractor during performance of the contract.

(3) *Adjustment Based on Labor or Material Costs* (*Cost Index Method*). Price adjustments are based on an increase or decrease from specified labor or material cost standards or indices made applicable to the contract.

(c) *Application*.

(1) *Adjustments Based on Established Prices*. One of the clauses in 7-106 shall be used in accordance with the following instructions. If none of these clauses is applicable, an economic price adjustment clause approved by the Department concerned, may be included.

a. Price Adjustment for Basic Steel, Aluminum, Brass, Bronze or Copper Mill Products. The price adjustment clause at 7-106.1 is authorized for use in fixed-price supply contracts for basic steel, aluminum, brass, bronze or copper mill products, such as sheets, plates and bars, when an established catalog or market price exists for the particular product being procured and has been verified in accordance with criteria in 3-807.7(b). The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the CPO. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in 3-807.7(b) and as required by paragraph (c)(4) of the clause.

b. Price Adjustment for Nonstandard Steel Items. The price adjustment clause at 7-106.2 is authorized for use in fixed price supply contracts when:

(i) the contractor is a steel producer and actually manufactures the standard steel mill item referred to in paragraph (d) of the clause; and

(ii) the items being procured are nonstandard steel items made wholly or in part of standard steel mill items.

When this clause is included in invitations for bids, Note (8) of the clause is inapplicable and shall be omitted. Invitations for bids or requests for proposals shall instruct bidders or offerors to complete all blanks in accordance with the applicable notes. When the clause is to provide for adjustment based on the contractor's "established price" (see paragraphs (a) and (d) of the clause and Note (8) of the clause), the established price shall be verified in accordance with 3-807.7(b) prior to contract award. When the clause is to provide for adjustment on another basis (see Note (8) of the clause), that price must be verified. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with criteria set forth in 3-807.7(b) (but see Note (8) of the clause) and as required by paragraph (f) of the clause. The 110% figure in paragraph (e) of the clause shall not be exceeded unless approved by the CPO.

c. Price Adjustment for Standard Supplies. The price adjustment clause at 7-106.3 is authorized for use in negotiated fixed price supply contracts for standard supplies for which established catalog or market prices exist and have been verified in accordance with criteria in 3-807.7(b) The clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in 3-807.7(b) and as required by paragraph (c)(4) of the clause. The 10 percent figure in paragraph (c)(1) of the clause shall not be exceeded unless approved by the CPO. If any standard trade discounts offered by the contractor from his list or catalog price are taken into account in negotiating the contract unit price, the contracting officer's file shall contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts.

d. Price Adjustment for Semistandard Supplies. The price adjustment clause at 7-106.4 is authorized for use in negotiated fixed price supply contracts for semistandard supplies, the prices of which can be reasonably related to the prices of nearly equivalent standard supplies for which established catalog or market prices exist and have been verified in accordance with criteria in 3-807.7(b). The clause should normally be used only when the total contract price is over $5,000 and delivery is not to be completed within six months after the contract date. No adjustment under this clause shall be made in the contract price until the requested adjustment has been verified by the contracting officer, in accordance with the criteria set forth in 3-807.7(b) and as required by paragraph (c)(4) of the clause. A clear understanding shall be set forth in writing prior to entering into the contract as to the identity of the standard supply items and the corresponding contract line items to which the clause applies. The 10 percent figure in subparagraph (c)(1) of the clause shall not be exceeded unless approved by the CPO. If any standard trade discounts offered by the contractor from his list or catalog price are taken into account in negotiating a contract unit price, the contracting officer's file shall contain a statement setting forth the list or catalog price and the discounts. The discounts referred to do not include prompt payment or cash discounts. When the supplies being purchased are standard supplies in all respects except for preservation, packaging, and packing requirements, this clause should not be used; in such cases, the clause for standard supplies, in 7-106.3, is the appropriate clause.

(2) *Adjustment Based on Labor or Material Costs* (*Actual Costs Method*).

a. The price adjustment clause in 7-107 is authorized for use in negotiated fixed price supply and service contracts when there is no major element of design engineering or developmental work involved in producing the items being procured and one or more identifiable labor or material cost factors are subject to change. The clause shall be limited to contracts in which the price exceeds $50,000 and the period of performance exceeds six months unless its use otherwise is approved by the Chief of the Purchasing Office. An appropriate modification of the clause may be used in advertised procurements, in accordance with 2-104.

b. The Schedule shall describe in detail the types of labor and materials subject to adjustment, the labor rates (including fringe benefits, if any), and unit prices of materials, which may be increased or decreased, and the quantities of labor and specified materials allocable to each unit of supplies to be delivered under the contract. The following sample format illustrates a type of schedule description that may be used:

The following types of labor and material are subject to price adjustment pursuant to the "*Economic Price Adjustment—Labor and Material*" clause of this contract.

Contract Item No. 1

Types of labor and materials	*Rates of pay and material prices*	*Quantities and direct costs per unit of procurement*
Drill Press Operator	$3.00/hour no fringe benefits included	
	$3.00	20 min—$1.00
Welder	$2.75/hour .05/hour—vacation pay .20/hour—pension plan	
	$3.00	10 min.—$.50
Copper Sheet	$.40/lb.	2 lb.—$.80
Purchased parts:		
(1) ABC tube X5721	$1.00 each	8 ea.—$8.00
(2) XYZ part No. 9348	$.50 each	10 ea.—$5.00

c. The 10 percent figure in subparagraph (c)(vi) of the clause shall not be exceeded unless approved by the Chief of the Purchasing Office. There shall be no percentage limitation on the amount of decrease. Decreases shall be the full amount of decrease in the labor rates and fringe benefits or unit prices for materials.

d. In negotiating adjustments under the clause, the contracting officer shall consider work in process and materials on hand at the time of changes in labor rates (including fringe benefits, if applicable) or material prices since these elements may have a significant impact on price adjustments. The price adjustment shall not include general and administrative expenses, profit, or overhead (except for fringe benefits as defined in 15-205.6(g)). Fringe benefits must be set forth in the schedule in order to be considered in any economic price adjustment.

e. If the specific terms and conditions of the clause authorized in *a* above are not applicable, a modified economic price adjustment clause to cover increases or decreases in the actual costs incurred by the contractor for labor or materials may be included if it is consistent with the guidelines contained in *a* through *d* above and is approved by the Department concerned.

(3) *Adjustments Based on Labor or Material Costs* (*Cost Index Method*).

a. As an alternative to the provisions authorized by (1) and (2) above, consideration should be given to inclusion of a special economic price adjustment clause designed to minimize contingency pricing and prepared under the guidelines listed in *c* below, when (i) there will be an extended period of performance with significant costs to be incurred beyond one year after commencement of contract performance, (ii) the contract amount subject to adjustment is substantial and (iii) the economic variables for labor and material are determined to be too unstable to reflect a reasonable division of risk between the parties absent economic price adjustment provisions.

b. All economic price adjustment clauses utilizing indices will be approved in accordance with Departmental procedures.

c. The following factors may be considered in preparing a price adjustment clause meeting the criteria of *a* above including construction of appropriate indices:

1. The clause should not be overly complex;

2. Normally, the clause should not provide either a ceiling or a floor for adjustment unless adjustment is based on indices below the four digit level of the Bureau of Labor Statistics Producer Price Index or the Wage and Income Series by Standard Industrial Classification (Labor).

3. Normally, the clause should cover all potential economic fluctuations within the original contract period of performance.

4. The clause must have a positive and accurate identification of the applicable index(es) upon which adjustments will be based and provide appropriate economic fluctuation in the event of the discontinuance of the publication of the movement of the designated index. This might include the substitution of another index if the time remaining would so justify and an appropriate index is reasonably available, or some other method for repricing of the remaining portion of the work to be performed. There should not normally be any need to make an adjustment in the event computation of the identified index is altered; however, provision may be made to adjust the economic fluctuation computations in the event there is such a substantial alteration to the method of computing the index as to negate the original intent of the parties. When an index to be used is subject to revision (e.g., the Bureau of Labor Statistics Producer Price Indexes), the economic price adjustment clause shall further specify that any economic price adjustment shall be based upon the applicable revised index.

5. An index should be structured to encompass a large sample of relevant items yet bear a logical relationship to the type of contract costs being measured. The basis of the index should not be so large and diverse that it is significantly affected by fluctuations not relevant to the contract performance, yet must be significantly broad so as to assure the minimal effect of any single company, including the anticipated contractors.

6. Construction of an index is largely dependent upon two general series published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). These are the Industrial Commodities portion of the Producer Price Index and the Wage and Income Series by Standard Industrial Classification for labor. Since there are no BLS published series currently available that relate directly to total prices of delivered DoD aircraft, ships, missiles, electronics, etc., such composite indices from major portions of the two series described above should be made.

7. Normally not more than two indices should be used, *i.e.*, one for labor (direct and indirect) and one for material (direct and indirect).

8. The clause must establish and properly identify a base period comparable to the contract periods for which adjustments are to be made as a reference point for application of an index.

9. The clause should provide for adjustment from the beginning of the contract or from such period of time that the rate of expenditure is commensurate with the administrative cost and effort to adjust, but it should not provide for adjustment beyond the original contract performance period.

10. The expenditure profile for both labor and material should be based on a predetermined rate of expenditure (expressed as the percentage of material or labor usage as it relates to total contract price) in lieu of actual cost incurred. In the event the clause is to be used in a competitive procurement, the labor and material allocations, with regard to both mix of labor and material and rate of expenditure by percentage, shall be determined by the PCO in a manner which will, as nearly as possible, approximate the average expenditure profile of all companies to be solicited in order that all companies may compete on an equal basis. If the clause is to be used in a noncompetitive procurement, the labor and material allocations as determined by the PCO may be subject to negotiation and agreement. For multi-year contracts, there should be established predetermined expenditure profile tables for each of the annual increments in the multi-year buy, with each of the second and subsequent year tables being cumulative to reflect the total expenditures for all increments funded through the latest multi-year funding.

11. The clause should state that percentage of the contract price subject to price adjustment. Normally, adjustments would not be applied to the profit portion of the contract. Additionally, the labor and material portions of the contract must be examined to exclude any areas that do not require adjustment. It may not be necessary, for example, to include all subcontracting as being subject to economic price adjustment because some of the subcontracting could be for shorter periods of time during the early life of the contract and, would be covered therefor, by firm priced subcontracting. It may be possible to exclude certain areas of overhead from economic price adjustment protection; for example, depreciation charges, prepaid insurance costs, rental costs, leases, certain taxes, and utility charges are illustrated as some of the areas that should be examined in detail. In the same manner, consideration should be given to the necessity to include economic fluctuation protection covering that portion of labor for the period of time for which a definitive union agreement exists without additional factoring for such things as cost of living increases. Care should be taken to allocate to labor and material only those costs likely to be affected by fluctuation in the economy. That portion of the contract which is determined to be proper for economic fluctuation protection shall then be allocated to specific periods of time (*e.g.*, - quarterly, semiannually, etc.) based on the most probable expenditure or commitment basis (expenditure profile).

12. The clause should provide for definite times or events positive for price adjustments. Adjustments should be of such a frequency so as to afford the contractor appropriate economic relief without at the same time creating a burdensome administrative effort. The adjustment period should normally range from a minimum of quarterly to a maximum of annually.

13. When the contract contains cost incentives, any sums paid to the contractor on account of economic price adjustment provisions shall be subtracted from the total of the contractor's allowable cost for the purpose of establishing the total costs to which the cost incentive provisions apply. If the incentive arrangement is cited in percentage ranges rather than dollar ranges, above and below target costs, the economic price adjustment clause should be structured to maintain the original contract incentive range in dollars.

14. The economic price adjustment clause should provide that once the labor and material allocations have been established, they remain fixed through the life of the contract and are not modified except in the event of partial termination of the contract. The clause should state that pricing actions pursuant to the Changes clause or other provisions of the contract will be priced as though there were no provision for economic price adjustment.

(d) Consistent with the factors set forth in (c)(3)*b* above, the contracting officer may also determine it appropriate to provide for certain economic price adjustment arrangements between the prime contractor and subcontractors to properly allocate risks. In such circumstances, provision for incorporation of price adjustment clauses in specified subcontracts should be included in the price adjustment provision of the prime contract.

(e) When economic price adjustment provisions are included in contracts that do not require submission of cost or pricing data as provided for in 3-807.3, it will be the responsibilty of the contracting officer to obtain adequate information to establish the base line from which adjustments will be made. In addition, the contracting officer may require verification of the data submitted to the extent considered necessary to permit reliance upon it as a reasonable base line.

3-404.4 *Fixed-Price Incentive Contracts.*

(a) *Description.*

(1) *General.* The fixed-price incentive contract is a fixed-price type contract with provision for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs.

(2) *Firm Target.* Under this type of incentive contract there is negotiated at the outset a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for establishing final profit and price. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula. When the final cost is less than target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. Thus, within the price ceiling, the formula provides for the Government and the contractor to share the responsibility for costs greater or less than those originally estimated, as determined by a comparison of negotiated final cost with target cost. Because the profit resulting from application of the formula is in inverse relationship to costs, the formula provides the contractor in advance with a calculable profit incentive to control costs. To provide an incentive consistent with the circumstances, the formula should reflect the relative risks involved in contract performance. Thus, it is appropriate in certain procurements to establish a formula which provides for contractor assumption of a considerable or major

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share of total cost responsibility. In such circumstances, when a major share of total cost responsibility is assumed by the contractor, every consideration will be given to establishing target profits which reflect assumption of such responsibility.

(3) *Successive Targets*. Under this type of incentive contract, there is negotiated at the outset an initial target cost, an initial target profit, a price ceiling, a formula for fixing the firm target profit, and a production point at which the formula will be applied. Generally, the production point will be prior to delivery or shop completion of the first item. This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. The initial formula shall also provide for a ceiling and floor on the firm target profit. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset (see (b)(3) below). Thus it normally will not provide for as great a degree of contractor cost responsibility as would a formula for establishing final profit and price. When the production point for applying the formula is reached, the firm target cost is then negotiated, consideration being given to experienced cost and all other pertinent factors, and the firm target profit is automatically determined in accordance with the formula. At this point, two alternatives are possible. First, a firm fixed price may be negotiated using as a guide the firm target cost plus the firm target profit. Second, if use of the firm fixed price is determined to be inappropriate, a formula for establishing final profit and price may be negotiated, using the firm target profit and the firm target cost. As in the firm target type of contract described in (a)(2), the final cost is negotiated at the completion of the contract and the final contract price is then established in accordance with the formula for establishing final profit and price.

(4) *Billing Price*. In either of the above types of contract, a billing price will be established as an interim basis for payment. This billing price may be adjusted within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated costs will be substantially different from the target cost.

(b) *Application*.

(1) Fixed-price incentive contracts are appropriate when use of the firm fixed-price contract is inappropriate, and the supplies or services being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance. It may also be appropriate to negotiate additional incentive provisions covering performance levels and more timely delivery (see 3–407.2). Contract performance requirements must be such that there is reasonable opportunity for the incentive provisions to have a meaningful impact on the manner in which the contractor manages the work. Separate incentive provisions may be made applicable to individual line items of a contract, *e.g.*, when dissimilar work is best incentivized by use of separate formulas.

(2) The firm target type of incentive contract, described in (a)(2) above, is appropriate for use whenever a firm target and a formula for establishing final profit and price can be negotiated at the outset which will provide a fair and reasonable incentive.

(3) The successive targets type of incentive contract, described in (a)(3) above, is appropriate for use whenever available cost and pricing information is not sufficient to permit the negotiation of realistic firm targets at the outset. However, enough information should be available to permit negotiation of initial targets, and there should be reasonable assurance that additional reliable information will be available at an early point in the performance of the contract so as to permit negotiation of either a firm fixed price, or firm targets and a formula for establishing final profit and price, which will provide a fair and reasonable incentive. The additional information need not in all cases come from experience under the contract itself, but may be drawn from experience on any other contracts for the same or similar items.

(c) *Limitations*. Fixed-price incentive contracts shall not be used unless the contractor's accounting system is adequate for price revision purposes and permits satisfactory application of the profit and price adjustment formulas. In no case should such contracts be used where (i) cost or pricing information adequate for firm targets is not available at the time of initial contract negotiation or at a very early point in performance, or (ii) the sole or principal purpose is to shift substantially all cost responsibility to the Government. In no case shall the firm target profit or the formula for final profit and price be established independently. Simultaneous, not sequential, agreement will be reached on all the elements of the pricing agreement. Neither type of fixed-price incentive contract shall be used unless a determination has been made, in accordance with the requirements of Part 3 of this Section III, that:

(i) such method of contracting is likely to be less costly than other methods, or

(ii) it is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

3-404.5 *Prospective Price Redetermination at a Stated Time or Times During Performance*.

(a) *Description*. This type of contract provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redetermination either upward or downward at a stated time or times during the performance of the contract. It also may provide for a price ceiling, where appropriate. Once established, ceiling prices are subject to adjustment only by reason of the operation of other contract clauses (see 3-404.1).

(b) *Application*. This type of contract is appropriate in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for an initial period, but not for subsequent periods of contract performance. This initial period should be the longest period for which it is possible to establish fair and reasonable firm fixed prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally be at least twelve months each. Ceiling prices, where appropriate, should be based on the evaluation of the uncertainties involved in contract performance, and their possible impact on cost, and should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations*. This type of contract shall not be used unless:

(i) it has been established through negotiations that a firm fixed-price contract does not fulfill the requirements established by the conditions surrounding the procurement;

(ii) the contractor's accounting system is adequate for price redetermination purposes;

(iii) the prospective pricing period can be made to conform with the operation of the contractor's accounting system; and

(iv) reasonable assurance exists that price redetermination action will be taken promptly at the time or times specified.

3–404.6 *Retroactive Price Redetermination After Completion.*

(a) *Description.* This type of contract provides for a ceiling price and retroactive price redetermination after completion of the contract. The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see 3–404.1).

(b) *Application.* This type of contract is appropriate in procurements where it is established at the time of negotiation that a fair and reasonable firm fixed price cannot be negotiated and the amount involved is so small or the time for performance so short that use of any other type of contract is impracticable. Even in these situations, however, it should be used only after negotiation of a billing price as fair and reasonable as the circumstances of the particular procurement permit. Based on an evaluation of the circumstances involved in contract performance, and their possible impact on cost, the ceiling price should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless the procurement is for research and development at an estimated cost of $100,000 or less, and

(i) the contractor's accounting system is adequate for price redetermination purposes;

(ii) reasonable assurance exists that price redetermination action will be taken promptly at the time specified;

(iii) a ceiling price is established; and

(iv) written approval has been received from the Head of a Procuring Activity.

3–404.7 *Firm Fixed-Price Level of Effort Term Contract.*

(a) *Description.* The firm fixed-price level of effort term contract describes the scope of work in general terms, usually calling for investigation or study in a specific research and development area. It obligates the contractor to devote a specified level of effort over a stated period of time for a fixed dollar amount. Normally, the contract requires submission by the contractor of reports which show the results achieved through application of the required level of effort; however, payment is based on effort expended rather than on results achieved. This type of contract can be a useful tool, particularly in the Research and Exploratory Development categories when the work cannot be clearly defined and the level of effort desired can be identified and agreed upon in advance of performance.

(b) *Limitations*. The firm fixed price level of effort term contract may be used only when:

(i) the work to be performed cannot otherwise be clearly defined;
(ii) the level of effort desired can be identified and agreed upon in advance of performance;
(iii) there is reasonable assurance that the result desired cannot be achieved by expenditure of less than the stipulated effort; and
(iv) the contract price does not exceed $100,000 unless approved by the Chief of the Purchasing Office.

3–405 Cost-Reimbursement Type Contracts.

3–405.1 *General.*

(a) *Description*. The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of (i) obligation of funds, and (ii) establishing a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Application*. The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that (i) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract and (ii) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used. While cost-reimbursement contracts are particularly useful for procurements involving substantial amounts, e.g., estimated cost of $100,000 or more, the parties may agree in a given case to use this type of contract to cover transactions in which the estimated costs are less than $100,000.

(c) *Limitations*. The cost-reimbursement type contract may be used only after a determination, in accordance with the requirements of Part 3 of this Section III, that—

(i) such method of contracting is likely to be less costly than other methods, or
(ii) it is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

3–405.2 *Cost Contract.*

(a) *Description*. The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Application*. The following are illustrative situations in which the use of this type of contract may be appropriate:

(i) research and development work, particularly with nonprofit educational institutions or other nonprofit organizations; and
(ii) facilities contracts.

3–405.3 *Cost-Sharing Contract.* A cost-sharing contract is a cost-reimbursement type contract, for use in research or development procurements, under which the contractor is reimbursed only for an agreed portion of his allowable costs. The contractor agrees to absorb a portion of the costs of performance in the expectation of substantial compensating benefits. For instructions governing the use of cost-sharing contracts, see 4–110.

3–405.4 *Cost-Plus-Incentive-Fee Contract.*

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target cost. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed to provide an incentive for maximum effort on the part of the contractor to manage the contract effectively.

(b) *Application.* The cost-plus-incentive-fee contract is suitable for use primarily for development and test when a cost-reimbursement type of contract is found necessary in accordance with 3–405.1(b), and when a target and a fee adjustment formula can be negotiated which are likely to provide the contractor with a positive profit incentive for effective management. In particular, where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical (see 3–402(b) and 3–407.2(b)). Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

(c) *Limitations.* The maximum fee shall not exceed the limitations stated in 3–405.6(c)(2).

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3–405.5 *Cost-Plus-Award-Fee* (*CPAF*) *Contract.*

(a) *Description.* The CPAF contract is a cost reimbursement type of contract with special fee provisions. It provides a means of applying incentives in contracts which are not susceptible to finite measurements of performance necessary for structuring incentive contracts. The fee established in a CPAF contract consists of two parts: (1) a fixed amount which does not vary with performance, and (2) an award amount, in addition to the fixed amount, sufficient to provide motivation for excellence in contract performance in areas such as quality, timeliness, ingenuity, and cost effectiveness. Award fee may be earned by the contractor in whole or in part. The amount of award fee to be paid is based upon a subjective evaluation by the Government of the quality of the contractor's performance, judged in the light of criteria set forth in the contract. The number of criteria used and the requirements which are represented will differ widely from one contract to another. Therefore, when determining criteria and rating plans the using activity should be flexible and select a plan which will motivate the contractor in a positive way to improve performance. Evaluations are furnished to the contractor to afford him an opportunity to comment on the evaluation findings. The decision that award fee has been earned is based on the reports of performance made by the Government personnel knowledgeable with respect to the contract requirements. This decision is a unilateral determination made by the Government not subject to the Disputes clause of the contract.

(b) *Application.* The CPAF contract is suitable for:

(i) level of effort contracts for performance of services where mission feasibility is established but measurement of achievement must be by subjective evaluation rather than objective measurement; and

(ii) work which would have been placed under another type of contract if the performance objectives could be expressed in advance by definite milestones, targets or goals susceptible of measuring actual performance.

(c) *Weighted Guidelines.* The weighted guidelines method (see 3–808) shall not be applied to CPAF contracts with respect to either the base (fixed) fee or the award fee.

(d) *Fee.* The amount of the base fee shall not exceed three per cent of the estimated cost of the contract exclusive of the fee, and the maximum fee (base fee plus award fee) shall not exceed the limitations stated in 3–405.6(c)(2).

(e) *Evaluation.*

(i) The contract should provide for evaluation at stated intervals during contract performance, so that the contractor will periodically be made aware of the quality of his performance and will know in which areas improvement is expected. Partial payment of fee will generally correspond to the evaluation periods. This will make effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(ii) Consideration may be given to (A) constituting a board to evaluate the contractor's performance and determine the amount of the award fee or recommend an amount to the contracting officer and, (B) to afford the contractor an opportunity to present matters on his own behalf.

(iii) The contract shall set forth those criteria to be used in evaluating the contractor's performance to arrive at the award fee. See examples of such criteria set forth in (i) below.

(f) *Disputes.* The contract shall expressly exclude from the operation of the Disputes clause any dispute over the amount of the award fee.

(g) *Limitations.*

(i) The CPAF contract shall not be used as an administrative technique to avoid CPFF contracts when the criteria for CPFF contracts apply, nor shall a CPAF contract be used to avoid the effort of establishing objective targets so as to make feasible the use of a CPIF type contract.

(ii) The CPAF contract shall not be used where the contract amount, period of performance or the benefits expected are insufficient to warrant the additional administrative effort or cost.

(iii) The CPAF contract shall not be used for procurements categorized as either Engineering Development or Operational System Development (see 4–101(a)) which have undergone contract definition, except that where it may be more advantageous to do so, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(h) *Other Application of the Award Fee Provision.* In certain cases, it may be desirable to motivate and reward a contractor for management performance over and above that which can be objectively measured and incentivised under other forms of government contracts. For example, logistics support, quality, timeliness, cooperation, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation. In such cases, the "award amount" portion of the fee applicable to the CPAF contract is an ideal method for incorporation of these additional incentives into government contracts; the "base fee" or fixed amount portion would not be applicable in these procurements. Accordingly, subject to the guidelines and procedures set forth in (a) through (g) above, and when approved by the Chief of the Purchasing Office, the "award amount" portion of the CPAF contract may be used in conjunction with other types and kinds of contracts for Government's benefit. An Award Review Board shall be appointed at each appropriate installation or activity. Procedures shall be established for the conduct of the evaluation. Further, the award fee provision shall not be used in conjunction with other types and kinds of contracts when the administrative effort or costs for evaluation exceed the benefits to be derived from the use of this arrangement.

(i) *Examples of Criteria.* (*Examples on following pages.*)

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PERFORMANCE EVALUATION REPORT CRITERIA

		Submarginal 0-60	Marginal 61-70	Good 71-80	Very Good 81-90	Excellent 91-100
A Time of Delivery	(A-1) Adherence to plan schedule.	Consistently late on 20% of plans.	Late on 10% plans w/o prior agreement.	Occasional plan late w/o justification	Meets plan schedule.	Delivers all plans on schedule & meets prod. change requirements on schedule.
	(A-2) Action on Anticipated delays.	Does not expose changes or resolve them as soon as recognized.	Exposes changes but is dilatory in resolution on plans.	Anticipates changes, advise Shipyard but misses completion of design plans 10%.	Keeps Yard posted on delays, resolves independently on plans.	Anticipates in good time, advises Shipyard, resolves independently and meets production schedule.
	(A-3) Plan Maintenance	Does not complete interrelated systems studies concurrently.	System studies completed but constr. plan changes delayed.	Major work plans co-ordinated in time to meet production schedules.	Design changes from studies and interrelated plans issued in time to meet product schedules.	Design changes, studies resolved and test data issued ahead of production requirements.
B Quality of Work	(B-1) Work Appearance	25% dwgs. not compatible with Shipyard repro. processes and use.	20% not compatible with Shipyard repro. processes and use.	10% not compatible with Shipyard repro. processes and use.	5% dwgs. prepared by Des. agent not compatible with Shipyard repro. processes and use.	0% dwgs. presented incl. Des. agent, vendors, subcontr. not compatible with Shipyard repro. processes and use.
	(B-2) Thoroughness and Accuracy of Work.	Is brief on plans tending to leave questionable situations for Shipyard to resolve.	Has followed guidance, type and standard dwgs.	Has followed guidance, type & standard dwgs. questioning and resolving doubtful areas.	Work complete with notes and thorough explanations for anticipated questionable areas.	Work of highest caliber incorporating all pertinent data required including related activities.
	(B-3) Engineering Competence-	Tendency to follow past practice with no variation to meet requmts. job in hand.	Adequate engrg. to use & adapt existing designs to suit job on hand for routine work.	Engineered to satisfy specs., guidance plans and material provided.	Displays excellent knowledge of constr. requmts. considering systems aspect, cost, shop capabilities and procurement problems.	Exceptional knowledge of Naval shipwork & adaptability to work process incorporating knowledge of future planning in Design.

PERFORMANCE EVALUATION REPORT CRITERIA (Cont'd.)

		Submarginal 0–60	Marginal 61–70	Good 71–80	Very Good 81–90	Excellent 91–100
B Quality of Work (Cont'd.)	(B–4) Liaison Effectiveness	Indifferent to requirements of associated activities, related systems, and Shipyard advice.	Satisfactory but dependent on Shipyard to force resolution of problems without constructive recommendations to subcontr. or vendors.	Maintains normal contact with associated activities depending on Shipyard for problems requiring military resolution.	Maintains independent contact with all associated activities, keeping them informed to produce compatible design with little assist. for Yard.	Maintains expert contact, keeping Yard informed, obtaining info from equip., supplies w/o prompting by Shipyard.
	(B–5) Independence and Initiative	Constant surveillance req'd. to keep job from slipping—assign to low priority to satisfy needs.	Requires occasional prodding to stay on schedule & expects Shipyard resolution of most problems.	Normal interest and desire to provide workable plans with average assistance & direction by Shipyard.	Complete & accurate job, free of incompatibilities with little or no direction by Shipyard.	Develops complete and accurate plans, seeks out problem areas and resolves with assoc. act. ahead of schedule.
C Effectiveness in Controlling and/or Reducing Costs	(C–1) Utilization of Personnel	Planning of work left to designers on drafting boards.	Supervision sets & reviews goals for designers.	System planning by supervisory, personnel, studies checked by engineers.	Design parameters established by system engineers & held in design plans.	Mods. to design plans limited to less than 5% as result lack engrg. system correlation.
	(C–2) Control Direct Charges (Except Labor)	Expenditures not controlled for services.	Expenditures reviewed occasionally by supervision.	Direct charges set & accounted for on each work package.	Provides services as part of normal design function w/o extra charges.	No cost overruns on original estimates absorbs service demands by Shipyard.
	(C–3) Performance to Cost Estimate	Does not meet cost estimate for original work or changes 30% time.	Does not meet cost estimate for original work or changes 20% time.	Exceeds original est. on change orders 10% time and meets original design costs.	Exceeds original est. on change orders 5% time.	Never exceeds estimates of original package or change orders.

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(J) *Example of Contractor Performance Evaluation Report.*

CONTRACTOR PERFORMANCE EVALUATION REPORT

Ratings	
Excellent	(91-100)
Very good	(81- 90)
Good	(71- 80)
Marginal	(61- 70)
Submarginal	(0- 60)

Period of ______________ 19____
Contract Number ______________
Contractor ______________
Date of Report ______________
PNS Technical Monitor/s ______________

CATEGORY	CRITERIA	RATING	ITEM FACTOR	EVALUATION RATING	CATEGORY FACTOR	EFFICIENCY RATING
A	TIME OF DELIVERY					
	A-1 Adherence to Plan Schedule	______	x .40 =	______		
	A-2 Action on Anticipated Delays	______	x .30 =	______		
	A-3 Plan Maintenance	______	x .30 =	______		
	Total Item Weighed Rating			______	x .30 =	______
B	QUALITY OF WORK					
	B-1 Work Appearance	______	x .15 =	______		
	B-2 Thoroughness and Accuracy of Work	______	x .30 =	______		
	B-3 Engineering Competence	______	x .20 =	______		
	B-4 Liaison Effectiveness	______	x .15 =	______		
	B-5 Independence and Initiative	______	x .20 =	______		
	Total Item Weighed Rating			______	x .40 =	______
C	EFFECTIVENESS IN CONTROLLING AND/OR REDUCING COSTS					
	C-1 Utilization of Personnel	______	x .30 =	______		
	C-2 Control of all Direct Charges other than labor	______	x .30 =	______		
	C-3 Performance to Cost Estimate	______	x .40 =	______		
	Total Item Weighed Rating			______	x .30 =	______

TOTAL WEIGHED RATING ______________
Rated by: ______________
Signature(s) ______________

NOTE: Provide supporting data and/or justification for below average or outstanding item ratings.

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3–405.6 *Cost-Plus-Fixed-Fee Contract.*

(a) *Description.* The cost-plus-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.

(b) *Application.* The cost-plus-fixed-fee contract is suitable for use when:

- (i) a cost-reimbursement type of contract is found necessary in accordance with 3–405.1(b);
- (ii) the parties agree that the contract should be fee bearing;
- (iii) the contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown; and where measuring achievements in contract performance does not lend itself to the subjective evaluation required in CPAF contracts; or
- (iv) the contract is for development and test where the use of a CPIF is not practical.

(c) *Limitations.*

(1) This type of contract normally should not be used in the development of major weapons and equipment, once prerequisite preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the Government generally has determined its desired performance objectives and schedule of completion (see 3–405.4). The cost-plus-fixed-fee contract shall not be used for procurements categorized as either Engineering Development or Operational System Development (see 4–101(a)); which have completed the Validation Phase except with the approval of the Head of a Procuring Activity or his designee, it may be used in these categories for individual procurements, ancillary to the development of a major weapon system or equipment, where the purpose of the procurement is clearly to determine or solve specific problems associated with the major weapon system or equipment.

(2) 10 U.S.C. 2306(d) provides that in the case of a cost-plus-fixed-fee contract the fee shall not exceed ten percent (10%) of the estimated cost of the contract, exclusive of the fee, as determined by the Secretary concerned at the time of entering into such contract (except that a fee not in excess of fifteen percent (15%) of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's cost and not in excess of six percent (6%) of the estimated cost, exclusive of fees, as determined by the Secretary concerned at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility projects.) As to fee limitations on subcontracts, see 3–807.9(d)(4).

(d) *Completion or Term Form.* The cost-plus-fixed-fee contract can be drawn in one of two basic forms, Completion or Term.

(1) The Completion form is one which describes the scope of work to be done as a clearly defined task or job with a definite goal or target expressed and with a specific end-product required. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, a final report of research accomplishing the goal or target) as a condition for payment of the entire fixed-fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Government can elect to require more work and effort from the contractor without increase in fee provided it increases the estimated cost.

(2) The Term form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time. Under this form, the fixed-fee is payable at the termination of the agreed period of time on certification of the contractor that he has exerted the level of effort specified in the contract in performing the work called for, and such performance is considered satisfactory by the Government. Renewals for further periods of performance are new procurement and involve new fee and cost arrangements.

(3) The Completion form of contract, because of differences in obligation assumed by the contractor, is to be preferred over the Term form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors can reasonably be expected to complete the work, as is usually the case in advanced development and engineering development. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

(4) In no event should the Term form of contract be used unless the contractor is obligated by the contract to provide a specific level-of-effort within a definite period of time.

3-406 Other Types of Contracts.

3-406.1 *Time and Materials Contracts.*

(a) The time and materials type of contract provides for the procurement of supplies or services on the basis of (i) direct labor hours at specified fixed hourly rates (which rates shall include wages, overhead, general and administrative expense, and profit), and (ii) material at cost, and, in addition, where appropriate, material handling costs as a part of material cost. Material handling costs may include all indirect costs, including general and administrative expense, allocated to direct materials in accordance with the contractor's usual accounting practices consistent with Section XV. Such material handling cost should include only costs clearly excluded from the labor hour rate. This type of contract does not afford the contractor any positive profit incentive to control the cost of materials or to manage his labor force effectively.

(b) *Application.* The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (i) engineering and design services in connection with the production of supplies; (ii) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools, (iii) repair, maintenance or overhaul work; and (iv) work to be performed in emergency situations.

(c) *Limitation*. Because this type of contract does not encourage effective cost control and requires almost constant Government surveillance, it may be used only after determination that no other type of contract will suitably serve. This type of contract shall establish a ceiling price which the contractor exceeds at his own risk. The contracting officer shall document the contract file to show valid reasons for any change in the ceiling and to support the amount of such change.

(d) *Optional Method of Pricing Material*. When the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, the contract may provide for charging material on a basis other than at cost if:

(i) the total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed twenty percent (20%) of the estimated contract price;

(ii) the material to be so charged is identified in the contract;

(iii) no element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(iv) the contract provides that the price to be paid for such material shall be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts to the Government, *provided* that in no event shall such price be in excess of the contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

3–406.2 *Labor-Hour Contract*.

(a) *Description*. The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not supplied by the contractor.

(b) *Application*. See 3–406.1(b).

(c) *Limitations*. See 3–406.1(c).

3–407 Additional Incentives.

3–407.1 *General*. In addition to the profit incentives to control costs, inherent in many of the contract types, and combinations thereof, described in 3–404 through 3–406, there are other means of providing profit incentives to contractors, which are described below, to obtain extra management attention and effort. Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

3–407.2 *Contracts with Performance Incentives*.

(a) *Description*. A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by

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providing for increases in the fee or profit to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance", as used in this paragraph 3-407.2, refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability of a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas or milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the contract must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(4) It is essential that there be explicit agreement between the Government and the contractor as to the effect on performance of contract changes (e.g., pursuant to the Changes clause).

(5) Care must be exercised, in establishing performance criteria, to give recognition to the fact that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(6) In establishing incentives in connection with delivery schedules, it is important to determine the Government's primary objectives in a given contract. In some instances, earliest possible delivery is of paramount importance. In others, early quantity production is essential. On the other hand, it may be that maintaining an established delivery schedule is all that is desired, and that a bettering of such schedule may disrupt continuity of production or run counter to funding limitations.

(7) It is important that incentive arrangements relating to delivery schedules specify the application of the reward/penalty structure in the event of Government-caused delays (e.g., delays in allotting additional funds to a contract) and other delays beyond the control of the contractor or subcontractor, and without the fault or negligence of either.

(b) *Application*. Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counter-balanced by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with the full cooperation of Government engineering and pricing specialists.

(c) *Limitations.*

(1) Performance incentives, when related to the performance of the product, may result in increased costs and shall always, except under firm fixed-price contracts, be coupled with a balancing of range of fee or profit on the cost and performance aspects, negotiated so as to give appropriate weight to basic procurement objectives. Where incentives relating to the performance of the product are included in a contract, and earliest possible delivery is of considerable importance to the Government, the contract normally should include a performance incentive relating to time of performance or for expedited delivery schedules.

(2) In the case of cost-plus-incentive-fee or cost-plus-award-fee type contracts, the maximum fee shall not exceed the limitation stated in 3–405.6(c)(2).

3–408 Letter Contract.

(a) *Definition.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of supplies, or performance of services, including, but not limited to, preproduction planning and the procurement of necessary materials.

(b) *Application.* A letter contract may be entered into when (i) the interests of national defense demand that the contractor be given a binding commitment so that work can be commenced immediately, and (ii) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible, as, for example, when the nature of the work involved prevents the preparation of definitive requirements, specifications, or cost data.

(c) *Limitations.*

(1) A letter contract shall be used only after a written determination that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable. Where a letter contract award is based on price competition, an overall price ceiling shall be included in the letter contract.

(3) A letter contract shall include an agreement between the Government and the contractor as to the date by which definitization is expected to be completed and a definitization schedule, as required by 7–802.5. This date shall be prior to:

(i) the expiration of 180 days from the date of the letter contract; or

(ii) forty percent (40%) of the production of the supplies, or the performance of the work, called for under the contract, whichever occurs first.

In extreme cases, an additional period may be authorized.

(4) The maximum liability of the Government stated in the letter contract will be the amount estimated to be necessary to cover the contractor's requirements for funds prior to definitization, but this amount shall not exceed fifty percent (50%) of the total estimated cost of the procurement unless advance approval is obtained from the official authorizing the letter contract.

(5) The total estimated cost shall not exceed the funds available for obligation and commitment in the appropriate allotment account. Therefore, the letter contract shall not describe, refer to, or otherwise commit the Government to a definitive contract in excess of the funds available for obligation and commitment at the time the letter contract is executed.

(6) Amendments to letter contracts to accomplish new procurement may be used only if the new procurement is inseparable from the procurement covered by the existing letter contract. Such amendments are subject to the same limitations as new letter contracts.

(d) *Definitization*. A letter contract shall be superseded by a definitive contract at the earliest practicable date and not later than the target date established in the Definitization clause or any extension thereof by the contracting officer. To cover unusual cases in which the Government and the contractor, after exhausting all reasonable efforts, cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause in 7–802.5 requires the contractor to proceed with the work and gives the contracting officer the right, with approval of the Head of the Procuring Activity, to determine a reasonable price or fee in accordance with Section III, Part 8, and Section XV, subject to the Disputes clause.

(e) *Content*. Letter contracts shall be specifically negotiated and, as a minimum, shall include the clauses required by Section VII, Part 8. Whether executed on Standard Form 26 or Standard Form 30, a definitized contract will be numbered as a modification of the letter contract as provided in 20–204.3(a).

3–409 Indefinite Delivery Type Contracts.

(a) One of the following indefinite delivery type contracts may be used for procurement where the exact time of delivery is not known at time of contracting.

(b) For items with a shelf-life of less than six months, consideration will be given to use of indefinite delivery type contracts with orders to be placed either (i) directly by the users, or (ii) by central purchasing offices with deliveries direct to users. See 1–1204.

(c) Depending on the situation, indefinite delivery type contracts may provide for (i) firm fixed prices, (ii) economic price adjustment, (iii) price redetermination, or (iv) prices established in accordance with (d) below.

(d) When indefinite delivery type contracts, whether competitively awarded or not, are priced on the basis of catalog or market prices, the price to be paid may be determined by establishing an adjustment factor for application to the price in industry-wide pricing guides or manufacturer's price catalogs. Normally, the adjustment factor will be a fixed percentage discount for application to the price in effect on the date of each order.

(e) When it is desired to authorize the use of the fast pay procedure for orders not in excess of $10,000, the special data required by 3–606.3(b) shall be included in the contract. The clause in 3–606.3(b)(iv) shall be modified for this purpose to refer to delivery orders and to the appropriate contract clause of the indefinite delivery type contract for the preparation of invoices.

3-409.1 *Definite Quantity Contracts.*

(a) *Description.* This type of contract provides for a definite quantity of specified supplies or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order.

(b) *Applicability.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of supplies or services will be required during a specified period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

3-409.2 *Requirements Contracts.*

(a) *Description.* This type of contract provides for filling all actual purchase requirements of specific supplies or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds are obligated by each order and not by the contract itself.

(b) *Applicability.* A requirements contract may be used for procurements when it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(i) flexibility with respect to both quantities and delivery scheduling;
(ii) supplies or services need be ordered only after actual needs have materialized;
(iii) when production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;
(iv) price advantages or savings may be realized through combining several anticipated requirements into one quantity procurement; and
(v) it permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

3-409.3 *Indefinite Quantity Contracts.*

(a) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific supplies or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the supplies or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. To assure that the contract is binding, the minimum must be more than a nominal quantity; yet it should not exceed the amount which the Government is fairly certain to order. When large individual orders or orders for more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered. Funds for other than the stated minimum quantity are obligated by each order and not by the contract itself.

(b) *Applicability.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the supplies or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

- (i) flexibility with respect to both quantities and delivery scheduling;
- (ii) supplies or services need be ordered only after actual needs have materialized;
- (iii) the obligation of the Government is limited; and
- (iv) it permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

3-409.4 *Orders.*

(a) Orders placed under indefinite delivery type contracts shall contain the following information, consistent with the contract terms:

- (i) date of order;
- (ii) contract number and order number;
- (iii) item number and description, quantity ordered, and contract price;
- (iv) delivery or performance date;
- (v) place of delivery or performance (including consignee);
- (vi) packaging, packing, and shipping instructions, if any;
- (vii) accounting and appropriation data; and
- (viii) any other pertinent information.

(b) Orders may be placed by means of written telecommunications media, if:

- (i) the contract provides for the placement of orders by such means,
- (ii) the orders are approved by the contracting officer prior to transmission, and
- (iii) the purchasing office retains all contract administration functions.

3-410 Other Types of Agreements.

3-410.1 *Basic Agreement.*

(a) *Description*. A basic agreement is not a contract. It is a written instrument of understanding executed between a Department or procuring activity and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirements of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement as required or applicable. Basic agreements may be used with fixed-price or cost-reimbursement type contracts. See 4-118.5 for basic agreements with educational institutions and nonprofit organizations.

(b) *Applicability*.

(1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) A basic agreement shall be modified only by a modification of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. To minimize modification, revisions to ASPR involving changes in authorized contract clauses utilized in basic agreements will provide appropriate direction with respect to any required modifications of basic agreements and to the extent possible, modifications will be required only in matters resulting from changes in statutes or Executive Orders. As a minimum, basic agreements shall be reviewed annually before the anniversary of their effective date and revised to conform with the current requirements of this Regulation. Modifications shall not have retroactive effect.

(3) Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(4) Basic agreements may include negotiated overhead rates for cost-reimbursement type contracts (see 3-700).

(5) A basic agreement shall be used to cover all subsequent procurements which fall within its scope. Provisions of the basic agreement, including supplements thereto, shall be incorporated into the formal contractual document covering the particular procurement by referring therein to the number of the basic agreement and each of its supplements. The reference "Basic Agreement No.—, as amended," shall not be used.

(6) Except as provided below when an existing contract is amended to effect new procurement, the supplemental agreement shall:

(i) incorporate the most recent basic agreement, including supplements thereto, to apply only to the work added by the supplemental agreement; or

(ii) if it is in the interest of the Government, incorporate the most recent basic agreement, including supplements thereto, to apply to the entire contract as of the date of the supplemental agreement.

An existing contract may be amended by a supplemental agreement effecting new procurement without incorporating the most recent basic agreement only if all clauses then required by statute, Executive Order, and this Regulation are included in the contract or the proposed supplemental agreement.

(7) Supplemental agreements negotiated pursuant to the terms of an existing contract and not involving new procurement may, if determined to be in the interest of the Government, amend the existing contract to conform to a subsequently executed or supplemented basic agreement.

(8) Clauses pertaining to subjects not covered in a basic agreement but applicable to the contract being negotiated shall be included in the contract as if no basic agreement existed.

(9) Where a clause which was included in the basic agreement pursuant to a deviation must be replaced by a revised clause, the revised clause may deviate to the same extent as the original clause if the revision is not related to the deviation, and if the deviation has not expired or been rescinded.

(10) If a letter contract has been entered into under a basic agreement which thereafter was superseded by a new basic agreement, or amended by supplemental agreement, the contractual instrument which definitizes such letter contract shall incorporate the superseding basic agreement or supplemental agreement, as applicable. If the basic agreement has been terminated without being superseded, or has expired, the definitive contract which supersedes the letter contract shall incorporate the clauses required by statute, Executive Order, or this Regulation.

(c) *Content and Form*. Basic agreements shall contain a set of "General Provisions". These general provisions shall include two groups of clauses. The first group, identified as "Part A", shall include all of the clauses made mandatory by statute, Executive Order, or the Armed Services Procurement Regulation for use in negotiated Government contracts, and shall be made a part of each formal contractual document. The second group, identified as "Part B", shall consist of clauses which may be made a part of each formal contractual document, depending upon their applicability to the particular procurement. The format set forth below may be adapted to fit specific circumstances.

BASIC AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND ....

This Agreement is entered into as of the .... day of .... 19.........between the United States of America, hereinafter called the "Government", represented by the Contracting Officer, ... and ...., a corporation organized and existing under the laws of the State of ...., herein called "Contractor."

The clauses and provisions of Parts A and B hereinafter set forth have been agreed upon by the parties hereto for use in negotiated .... type contracts and in letter contracts contemplating conversion to .... type contracts, between the parties, entered into on or after the date of this Agreement, and prior to its termination. It is further agreed that (i) the clauses and provisions set forth in Part A are mandatory clauses and shall, by reference or attachment, be incorporated in each contract awarded pursuant to this Agreement, and (ii) the clauses and provisions set forth in Part B are to be similarly incorporated in such contracts only when applicable and agreed to by the parties for each individual contract.

This Agreement, including Parts A and B hereof, may be amended only by mutual agreement of the parties, and the Agreement may be terminated in its entirety by either party upon thirty (30) days written notice to the other party, except that this Agreement may be terminated by the Government at any time if the parties fail to agree upon any deletion, amendment or addition to this Agreement which is required by statute, Executive Order, or the Armed Services Procurement Regulation. No deletion, modification, addition to, or termination of, this Agreement shall affect any contracts theretofore entered into between the parties in which this Agreement or a portion thereof has been incorporated by reference.

This Agreement shall be reviewed, as a minimum, annually before the anniversary of its effective date, and revised to conform with all requirements of statutes, Executive Orders, or the Armed Services Procurement Regulation. This revision shall be evidenced by an agreement modifying this Basic Agreement or by the issuance of a superseding Basic Agreement.

This Agreement shall not be referred to by the Contractor in bids submitted in response to invitations for bids nor become a part of any contract placed through the process of formal advertising.

In WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written:

UNITED STATES OF AMERICA
By ....
(Contracting Officer)

....
(Name of Company)
By ....
..........*(Title)*

(d) *Limitations.*

(1) Basic agreements shall neither cite appropriations to be charged nor to be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved, nor shall they be used in any manner to restrict competition.

(3) Basic agreements generally shall be utilized only in connection with negotiated contracts.

3–410.2 *Basic Ordering Agreement.*

(a) *Description.*

(1) A basic ordering agreement is not a contract (but see 12–302, 12–602.1 and 12–1001). It is an agreement which is similar to a basic agreement (see 3–410.1) except that it also includes a description, as specific as practicable, of the supplies to be furnished or services to be performed when ordered and a description of the method for determination of the prices to be paid to the contractor for the supplies or services. Such method shall be consistent with the contract types authorized by this Part. Either the specific terms and conditions of delivery or a description of the method for their determination shall be set forth in the basic ordering agreement. The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required. Orders shall be issued on DD Form 1155 or Standard Form 26 and shall incorporate by reference the provisions of the basic ordering agreement. When it is desired to

use the fast pay procedure for orders not in excess of $10,000, the special data required by 3-606.3(b) shall be included in the basic ordering agreement. The clause in 3-606.3(b)(iv) shall be modified for this purpose to refer to orders and to the appropriate clause of the basic ordering agreement for the preparation of invoices.

(2) The basic ordering agreement shall specify the point at which each order becomes a binding contract. For example, the agreement may provide either (i) that issuance of an order gives rise to a contract immediately, (ii) that a contract arises upon the contractor's failure to reject the order within a specified number of days, or (iii) that a contract arises when the contractor accepts the order in a specified manner, such as by postcard, telegram, letter, signing and returning a copy of Standard Form 26 or DD Form 1155.

(b) *Applicability*. The basic ordering agreement may be used as a means of expediting procurement where specific items, quantities, and prices are not known at the time of execution of the agreement but where past experience or future plans indicate that a substantial number of requirements for items or services of the type covered by the basic ordering agreement will result in procurements from the contractor during the term of the agreement. Under proper circumstances, use of the procedures under the agreement is advantageous and economical in ordering parts for equipment support since such procedures substantially shorten the administrative time required for placing such articles in a production status, thereby not only decreasing the amount of support inventory required to be carried but also decreasing the possibility that parts procured will become obsolete as a result of design changes in the equipment.

(c) *Limitations*.

(1) Basic ordering agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved, nor shall they be used in any manner to restrict competition.

(2) Supplies or services may be ordered under a basic ordering agreement only under the following circumstances:

- (i) If it is determined at the time the order is placed that it is impracticable to obtain competition by either formal advertising or negotiation for such supplies or services; or
- (ii) If after a competitive solicitation of quotations or proposals from the maximum number of qualified sources (see 3-101), other than a solicitation accomplished by use of Standard Form 33, it is determined that the successful responsive offeror holds a basic ordering agreement, the terms of which are either identical to those of the solicitation or different in a way that could have no impact on price, quality or delivery, and if it is determined further that issuance of an order against the basic ordering agreement rather than preparation of a separate contract would not be prejudicial to the other offerors.

In situations covered by (ii), the choice of firms to be solicited shall be made in accordance with normal procedures, without regard to which firms hold basic ordering agreements; firms not holding a basic ordering agreement shall not be precluded by the solicitation from proposing or quoting; and the existence of a basic ordering agreement shall not be a consideration in source selection.

(3) The Government shall neither make any final commitment nor authorize any work by the contractor pursuant to an order under a basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either:

(i) the order is subject to provisions contained in the basic ordering agreement which set forth adequate procedures for arriving at prices as early in contract performance as practical, but in no event shall such procedures permit the price of the entire order to be established on a retroactive basis (however, incentive provisions consistent with this part are permitted); or

(ii) the need for the supplies or services is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date and when they could not be furnished by that date if the contractor is not allowed to proceed with work until prices have been established. The circumstances listed in 3-202.2 are indicative of instances in which the contractor may be permitted to proceed with work prior to establishment of prices.

As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(4) Each order issued under a basic ordering agreement shall cite the applicable negotiation authority and shall be subject to such reviews, approvals, determinations and findings (including those pertaining to types of contracts), and other requirements (including those pertaining to synopsis of the proposed procurement and contract awards) specified in this Regulation as would be applicable if the order were a contract entered into apart from the basic ordering agreement. When the use of a BOA is restricted to the procurement of specific supplies or services available from only one source and the placement of all future orders to the contractor holding the basic ordering agreement is supported by a determination that competition by formal advertising or negotiation is impractical, the purchasing office shall be responsible for synopsizing the proposed procurement prior to issuance of the BOA. If the contract administration office is authorized to issue orders under the basic ordering agreement, the purchasing office shall be responsible for providing the contract administration office with evidence of synopsis, appropriate approvals, and determinations and findings required above.

(5) A basic ordering agreement shall be modified only by a revision of the basic ordering agreement itself and shall not be modified or superseded by individual orders issued thereunder. To minimize modifications, revisions to ASPR involving changes in authorized contract clauses, utilized in basic ordering agreements shall provide appropriate direction with respect to any required modifications of basic ordering agreements; and, to the extent possible, modifications shall be required only in matters resulting from changes in statutes, or Executive Orders. Basic ordering agreements shall be reviewed at least annually, before the anniversary of their effective dates, and revised to conform with the current requirements of this Regulation. Modifications shall not have retroactive effect.

(6) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of (1) through (4) above.

PROCUREMENT BY NEGOTIATION

Part 5—Solicitations of Proposals and Quotations

3-500 Scope of Part. This part applies to all negotiated acquisition except that described by Part 6 of this Section III.

3-501 Preparation of Request for Proposals or Request for Quotations.

(a) *General.* Forms used for requesting proposals or quotations on negotiated acquisition shall be as required by (b) and (c) below and by Section XVI, or if not required by such Section, as prescribed by Departmental regulations. Generally, requests for proposals and requests for quotations shall be in writing. However, in appropriate cases as prescribed in (d) below, proposals or quotations may be solicited orally, *provided* that the resulting definitive contract is prepared on the prescribed contract form for signature by both parties, except that in the acquisition of perishable subsistence, DPSC Form 300, Order for Subsistence, may be used. Solicitations shall contain the information necessary to enable a prospective offeror or quoter to prepare a proposal or quotation properly. All such information shall be set forth in full in the solicitation rather than incorporated by reference, except that:

(1) Standard and DD ASPR Forms consisting of general provisions (contract clauses) prescribed by Section VII may be incorporated by reference to the form number, form name, and edition date; *provided*, the instructions for use of the form do not prohibit the incorporation of the form by reference; and

(2) other contract clauses set forth in Section VII may be incorporated by reference if authorized by 7-001.

No other contract clauses shall be incorporated by reference. Written requests shall be as complete as possible and normally should contain the information in (b) and (c) below, as appropriate, if applicable to the acquisitions involved.

(b) *Contract Forms and Uniform Contract Format.*

(1) This paragraph (b) applies to all negotiated acquisitions except:

a. small purchases and other simplified purchase agreements;
b. basic agreements;
c. pre-invitation notices;
d. the first step of two-step formal advertising;
e. construction and architect-engineer contracts;
f. ship construction including shipbuilding, conversion and repair;
g. acquisitions for which special contract forms inconsistent herewith are prescribed by Part 5 of Section XVI; and
h. acquisitions of subsistence.

Those acquisitions enumerated *f* through *h* need not be in the Uniform Contract Format, but must contain all applicable items. The applicability of this paragraph to acquisitions outside the United States, its possessions and Puerto Rico is optional.

(2) Requests for proposals shall be prepared on Standard Form 33, Solicitation, Offer and Award (see 16-102.3), or on forms prescribed by Departmental regulations; requests for quotations shall be prepared on Standard Form 18, Request for Quotations (see 16-102.1) or on forms prescribed by Departmental regulations.

(3) The following subparagraphs are grouped so as to conform to the Uniform Contract Format (including the Table of Contents) set out below. All items of information shall be set forth in the appropriate Sections. Arrangement in this Uniform Contract Format for fixed-price supply and service contracts does not preclude use of the following paragraphs in preparing requests for proposals or requests for quotations for other types of contracts.

TABLE OF CONTENTS

THE FOLLOWING CHECKED SECTIONS ARE CONTAINED IN THE CONTRACT							
(X)	SEC		PAGE	(X)	SEC		PAGE
		PART I—THE SCHEDULE				PART III—LIST OF DOCUMENTS, EXHIBITS, AND OTHER ATTACHMENTS	
	A	Contract Form			J	List of Documents, Exhibits, and Other Attachments	
	B	Supplies/Services and Prices				PART IV—GENERAL INSTRUCTIONS	
	C	Description/Specifications			K	Representations, Certifications, & Other Statements of Offeror	
	D	Packaging and Marking			L	Instructions and Conditions, and Notices to Offerors	
	E	Inspection and Acceptance			M	Evaluation Factors for Award	
	F	Deliveries or Performance					
	G	Contract Administration Data					
	H	Special Provisions					
		PART II—GENERAL PROVISIONS					
	I	General Provisions					

Part I—The Schedule

SECTION A - Contract Form.

(i) for requests for proposals, either Standard Form 33, Part 1 (Solicitation, Offer, and Award and Acknowledgement of Amendments) or forms prescribed by Departmental regulations. Instructions for filling out SF 33 are in 16-604.1 and 16-104.2.

(ii) for requests for quotations, either SF 18 (Request for Quotations) or forms prescribed by Departmental regulations. Instructions for filling out SF 18 are in 16-104.1 and 16-104.5; if the Request for Quotations is for informational or planning purposes, the statement in 1-309 shall be placed on the face of the request;

(iii) when neither SF 18 nor SF 33 is used, the following shall be included in the first page of the solicitation:
  - (A) name and address of issuing activity, channels for submission of proposal/quotation, location, including room and building number where proposals/quotations, including a hand-carried proposal or quotation, must be submitted;
  - (B) date of issuance;
  - (C) closing date and time;
  - (D) number of pages;
  - (E) requisition or other purchase authority.

SECTION B - Supplies/Services, and Prices.

(i) a brief description of the contract line items being acquired (i.e., item numbers, NSN/part numbers, nouns and quantities);

(ii) any provisions for extent of quantity variations (see 1-325);

(iii) if the DD Form 1423 (Contract Data Requirements List) is used for obtaining data, one or more line or subline items of data in this Section B referring to the DD Form 1423; (see 16-815)

(iv) information normally contained in Sections C, D, E, and F relating to specific line items may be included in Section B with the appropriate line item.

SECTION C - Description/Specifications.

(i) when the NSN/part number and noun or brief description is not in sufficient detail to permit full and free competition, a sufficient description (including any necessary specifications) of the supplies and services to be furnished shall be provided in this Section C. Reference to specifications shall include identification of all amendments or revisions thereof, applicable to the acquisition and dates of both the specifications and the revisions (see Section 1, Part 12);

(ii) in accordance with 1-1206, the statement in 7-2003.10 for a "brand name or equal" item.

SECTION D - Packaging and Marking.

(i) packaging and marking requirements, if any (see 1-1204).

SECTION E - Inspection and Acceptance.

(i) place of inspection and place of acceptance, and any other instructions required to supplement the requirements of Section XIV, Part 3.

SECTION F - Deliveries or Performance.

(i) the time of delivery or performance (see 1-305);

(ii) place and method of delivery (see Section XIX);

(iii) when MILSTAMP procedures apply to shipments of supplies, a provision setting forth the obligations of the contractor under such procedures (see 19-101).

SECTION G - Contract Administration Data.

(i) accounting and appropriation data (Note: where SF 33 is used, include only data not set forth on that form);

(ii) instructions to paying offices and administrative contracting offices, including name, organization code, and telephone area code, number, and extension of contracting office representative.

(iii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

SECTION H - Special Provisions.

(i) if the contract is to include option provisions, a clear statement of the provisions (see 1-1506);

(ii) if the contract is to include design-to-cost requirements, provisions in accordance with 1-338;

(iii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if the acceptance does not prejudice any other offeror (this may be placed elsewhere as long as the notice is adjacent to the limitation as to option price);

(iv) if the price negotiated is not predicated on allowability of the cost of money for facilities capital employed, the contract shall include a statement that: the cost of money for facilities capital (15-205.50) is unallowable.

(v) if the contract is to be conditioned on the availability of funds, include one of the clauses in 7-104.91;

(vi) if the contract is multiyear, the provisions required by 1-322.2(a), (b), or (f);

(vii) any progress payments provisions (see Appendix E);

(viii) any applicable Service Contract Act wage determinations of the Secretary of Labor (see Section XII, Part 10);

(ix) any special provisions relating to the Government's providing Government production and research property (see Section XIII, Part 3);

(x) when the clause in 7-104.62 is included in the contract and Appendix I, Table 2, does not list addresses of the required special distribution recipients, the applicable names and addresses shall be included in this Section H. The contracting office issuing the contract shall reference the line item as necessary, the addresses of the status control activity/ inventory manager, and, if applicable, the processing contracting office cited in the Military Interdepartmental Purchase Request (MIPR);

(xi) in accordance with 1-1208, the clause in 7-104.48 and the clause in 7-104.49;

(xii) if the contract is to contain the Safety Precautions for Ammunition and Explosives clause in 7-104.79, a specific list of any of the mandatory requirements of DoD Manual 4145.26-M that are being waived;

(xiii) when the contract is expected to contain requirements for provisioned items, include the information prescribed in 4-302.1;

(xiv) for acquisitions involving Military Assistance Program (MAP)(Grant Aid), include the MAP Record Control/Program/Directive Number identifier and special markings, if appropriate. For Foreign Military Sales (FMS) acquisitions, include the special markings, if appropriate, and specify the FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA. These identification entries are required to permit the contractor to comply with Appendix I-301, Block 16(12), and to facilitate collection of contract administration charges from foreign governments on FMS acquisitions.

(xv) if the contract is for supplies acquired for resale, include the clause in 7-104.88;

(xvi) if international air transportation of personnel and cargo is possible during performance of the contract, include the clause in 7-104.95;

(xvii) in accordance with 9-603(b), insert the Identification of Restricted Rights Computer Software provision in 7-2003.76;

(xviii) if the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2;

(xix) when the proposed contract is to require the contractor to prepare production progress reporting in accordance with the clause in 7-104.51, the contract schedule shall contain instructions as prescribed in 25-202; and

(xx) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340.

Part II—General Provisions

SECTION I - General Provisions.

(i) such general contract provisions (contract clauses) as are required by law or by this Regulation;

(ii) such additional general provisions (contract clauses) as may be applicable to the contract;

(iii) such alterations in contract provisions as are appropriate.

Part III—List of Documents, Exhibits, and Other Attachments

SECTION J - List of Documents, Exhibits, and Other Attachments.

(i) Here list all of the documents, exhibits, and other attachments that make up the request for proposals or requests for quotations package; give form number, name, date, and number of pages for each document; give type and identifier (for example, "Exhibit A"), name, and number of pages for each exhibit, appendix, or other attachment (for example, work frequency schedules, work statements, specifications, special requirements, or other documents too lengthy to be conveniently written into the request for proposals or request for quotations proper).

Part IV—General Instructions

SECTION K - Representations, Certifications, and Other Statements of Offeror.

(i) when neither SF 18 nor SF 33 is used, the following shall be included in this Section K:

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check or complete all applicable boxes or blocks.)

(A) SMALL BUSINESS

He ☐ is, ☐ is not a small business concern. A small business concern for the purpose of Government contracting is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is quoting on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.) If the offeror/quoter is a small business concern and is not the manufacturer of the supplies offered, he also represents that all supplies to be furnished /_/ will, /_/ will not, be manufactured or produced by a small business concern in the United States, its possessions, or Puerto Rico.

(B) SMALL DISADVANTAGED BUSINESS CONCERN

(a) The offeror represents that he ( ) is, ( ) is not, a small business concern owned and controlled by socially and economically disadvantaged individuals. The term "small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" means a small business concern—

(1) that is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and

(2) whose management and daily business operations are controlled by one or more such individuals.

(b) The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans (i.e., American Indians, Eskimos, Aleuts, and Native Hawaiians), Asian-Pacific Americans (i.e., U.S. citizens whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act.

(C) REGULAR DEALER-MANUFACTURER (applicable only to supply contracts exceeding $10,000)

He is a ☐ regular dealer in, ☐ manufacturer of, the supplies offered.

(D) CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

(Insert the provision in 7-2003.1 in accordance with 1-115(a).)

(ii) when a request for proposals form other than SF 33 is used, a requirement for stipulation of a time within which the Government may accept the proposal;

(iii) when SF 33 is not used, the Contingent Fee clause in 7-2002.1 (if required by 1-506.1) and the following:

TYPE OF BUSINESS ORGANIZATION

The Offeror/Quoter represents and certifies as part of his proposal/quotation that: (Check all applicable boxes or blocks.)

He operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a corporation, incorporated under the laws of the State of ____________________.

BEST DOCUMENT AVAILABLE

(iv) a statement requesting the prospective offeror or quoter to list the names and telephone numbers of persons authorized to conduct negotiations;

(v) where SF 33 (Solicitation, Offer, and Award) is not used, a statement that prospective offerors/quoters should indicate in the offer/quotation the address to which payment should be mailed, if such address is different from that shown for the offeror/quoter. (Contracting officers shall include this information in all resultant contracts that are to be administered by a Defense Contract Administration Services Regional Office);

(vi) unless exempted by 12-805 from inclusion of the Equal Opportunity clause, the provisions in 7-2003.14(b)(1) and (2);

(vii) the clause in 7-2003.13 shall be included in Requests for Proposals that do not involve set-asides for labor surplus area concerns;

(viii) a requirement that the proposal or quotation state the intended place of performance, including the street address, and the names and addresses of owner and operator of producing facilities, if other than offeror or quoter, when it is reasonably anticipated that such facilities will be used in the performance of the contract;

(ix) if the contract is for the Military Assistance Program, the certificate in 7-2003.50;

(x) unless the contract is exempt from the Buy American Act and the Balance of Payments Program, the certificate in 7-2003.47;

(xi) a request that prospective offerors or quoters state whether, to their knowledge, the contract performance involves the acquisition of Government production and research property, the disposal of which may be restricted by patent or other rights (see 13-307(b));

(xii) when the delivery of technical data is required, insert the provision in 7-2003.66;

(xiii) the appropriate transportation solicitation provisions as required by 2-201(a) Section K (x) through (xiv);

(xiv) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);
  (B) in accordance with 3-1204.1(a)(vii)(A), insert the provision in 7-2003.67(b);
  (C) in accordance with 3-1204.1(b), insert the provision in 7-2003.67(c);
  (D) in accordance with 3-1213(a), insert the provision in 7-2003.67(d);

(xv) any requirement for royalty information to be furnished with the offer of quotation (see 9-110(a));

(xvi) when neither SF 33 (Solicitation, Offer, and Award) nor SF 18 (Request for Quotations) is used, insert a requirement for inclusion of "country" as part of quoter's/offeror's address;

(xvii) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), insert the provision in 7-2003.15;

(xviii) when the proposed acquisition consists of a partial set-aside for LSA firms (1-706.7 or 1-804.1) or a partial set-aside for small business firms (1-706.6), include the clause in 7-2003.21;

(xix) the Clean Air and Water certification in 7-2003.71;

(xx) insert the Small Disadvantaged Business Concern representation in 7-2003.74;

(xxi) insert the Women-Owned Business representation in 7-2003.80;

(xxii) insert the Percent Foreign Content representation in 7-2003.81;

(xxiii) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

SECTION L - Instructions and Conditions, and Notices to Offerors/Quoters.

(i) when SF 33 is used, it shall be accompanied by SF 33A (Solicitation Instructions and Conditions); alternatively, SF 33A may be incorporated by reference to the form name, number and edition date;

(ii) the Late Technical Proposals provision in 7-2002.3 or the Late Proposals provision in 7-2002.4 (these replace paragraphs 7 and 8 of SF 33A);

(iii) the Order of Precedence provision in 7-2003.41 (this replaces paragraph 19 of SF 33A);

(iv) type of contract contemplated, together with type of repricing, and economic price adjustment, if any;

(v) when telegraphic offers are authorized, a provision similar to that in 7-2003.29;

(vi) permission, if any, to submit alternate offers, including alternate materials or designs (see 1-1207);

(vii) if no award will be made for less than the full quantities solicited, a statement to that effect;

(viii) if award is to be made by specified groups of items or in the aggregate, a statement to that effect;

(ix) bid guarantee, performance bond, and payment bond requirements, if any (see Section X, Part 1). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision in 7-2003.25;

(x) directions for obtaining copies of any documents, such as plans, drawings and specifications, that have been incorporated by reference (see 1-1203);

(xi) information as to requirements for a Certificate of Current Cost or Pricing Data (see 3-807);

(xii) any requirements for samples or descriptive literature (for definitions, see 2-202.4 and 2-202.5(a), respectively);

(xiii) when SF 33 is not used, consistent with 3-805.1(a)(v), notice to all offerors that award may be made without discussion of proposals;

(xiv) if the contract involves performance of services on a Government installation, the provision in 7-2003.39;

(xv) in accordance with 6-1104, the U.S.-owned foreign currency provision in 7-2003.62;

(xvi) solicitations that will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xvii) when the contract is to contain a first article approval clause, the statement required by 1-1903;

(xviii) any applicable notices of small business or labor surplus area set-asides (see 1-706 and 1-804.2);

(xix) the applicable size standard and product classification (see 1-701 and 1-703);

(xx) any offer by the Government to provide Government production and research property for the performance of the contract (see Section XIII, Part 3);

(xxi) description of the procedures to be followed in obtaining permission to use Government production and research property (see Section XIII, Parts 4 and 5);

(xxii) the provision in 7-2003.40 concerning unnecessarily elaborate proposals;

(xxiii) the provision in 7-2003.10 (suitably modified for negotiation procedures) when a "brand name or equal" item is being acquired;

(xxiv) instructions regarding the marking of information that is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals or quotations (see 3-507.1);

(xxv) instructions with respect to disposition of drawings and specifications supplied with the request for proposals or request for quotations;

(xxvi) statutory cost limitation, if any;

(xxvii) if the DD Form 1423 (Contract Data Requirements List) is used, a provision that if the offeror fails to enter the required information in Blocks 25 and 26 of DD Form 1423 in accordance with instructions on the form as part of his submission and refuses to do so on request, his offer may be rejected;

(xxviii) a statement covering special technical capabilities that the offeror must possess;

(xxix) a description of any information required to support proposed prices (subcontract structure, make-or-buy program, purchasing system, royalty, and cost and price information) (see Section III, Parts 8 and 9; Section IX, Part 1; and Section XXIII);

(xxx) in accordance with 7-2003.14(a), the notice of Preaward On Site Equal Opportunity Compliance Review set forth therein;

(xxxi) when Cost/Schedule Control Systems Criteria are required (see 1-331(h)), the provision in 7-2003.43 shall be included;

(xxxii) if the solicitation is to include an Industrial Preparedness production planning line item, the provision in 7-2003.68 shall be included;

(xxxiii) in accordance with 3-213.4, insert the Notice of Possible Standardization provision in 7-2003.38;

(xxxiv) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(xxxv) when the statement of work requires the design, development, or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72.

(xxxvi) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(xxxvii) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b);
(xxxviii) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer;
(xxxix) reserved; and
(xl) information as to requirements for a Jewel Bearing and Related Items Certificate when required by 1-2207.2.

SECTION M - Evaluation Factors for Award.

(i) factors other than price (including technical quality when technical proposals or quotations are requested), which will be given paramount consideration in the awarding of the contract; when an award is to be based upon technical and other factors, in addition to price or cost, the solicitation shall clearly inform offerors of (A) the significant evaluation factors, (B) the relative order of importance the Government attaches to price and all such other factors, and (C) the multiple awards provision in 7-2003.23(b) (see 2-407.5(iii)). Numerical weights, which may be employed in the evaluation of proposals, shall not be disclosed in solicitations;
(ii) statements of information required to enable evaluation of technical and financial capabilities;
(iii) discount provisions (see 2-407.3);
(iv) any provision concerning evaluation or award peculiar to the kind of contract (for example, the provision required by 22-702.1 for laundry and drycleaning services and that required by 22-502 for mortuary services);
(v) if, pursuant to 1-1504, options are to be evaluated for award, the applicable Evaluation of Options provision shall be inserted;
(vi) a statement explaining the evaluation procedure to eliminate the competitive advantage from the rent-free use of Government production and research property (see Section XIII);
(vii) any information pertaining to evaluation and award when first article approval is involved (see 1-1903);
(viii) in a solicitation for supplies of which wool is a component, the Domestic Wool Preference provision in 7-2003.48;
(ix) the appropriate transportation solicitation evaluation provisions in 7-2003.23 and 7-2003.24;

(x) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals or quotations (The amount of any royalty payable under the royalty-sharing provisions of a previously accepted value engineering change proposal incorporated in the solicitation will be considered in evaluating offers when the value engineering change is one of two or more acceptable alternatives under the solicitation.); see also 1-304.3;

(xi) when it is determined that transportation costs are not to be evaluated because it is impracticable to do so, the provision in 19-208.4(b).

(c) *Construction Contracts*. Solicitations for negotiated construction contracts shall contain the following information if applicable to the acquisition involved:

(i) requests for proposals number;

(ii) name and address of issuing activity, channels for submission of offer, exact location, including room and building numbers where offers, including a hand-carried offer, must be submitted, and identification of the Government office or individual responsible for supplying additional information and answering inquiries;

(iii) date of issuance;

(iv) closing date and time;

(v) number of pages and list of enclosures;

(vi) requisition or other purchase authority and appropriation and accounting data, if considered appropriate by the contracting activity;

(vii) a brief description of the work to be performed;

(viii) type of contract contemplated, together with type of repricing;

(ix) the time of performance (see 18-805);

(x) bid guarantee, performance bond, and payment bond requirements if any (see Section X, Part 1; 16-401.2(c)(iii)(1); and 18-801). If a bid bond or other form of bid guarantee is required, the solicitation shall include the provision required by 10-102.4;

(xi) a requirement for stipulation of a time within which the Government may accept the proposal;

(xii) consistent with 3–805.1(a)(v), notice to all offerors of the possibility that award may be made without discussion of proposals (All requests for proposals for construction shall contain a provision that in the event several proposals are received and the contracting officer is satisfied that the offerors understand the work and are responsible prospective contractors and that the low proposal is reasonable and does not differ unreasonably from the Government estimate, if any, award may be made to the firm whose proposal is low, without further negotiation.);

(xiii) special provisions necessary for the particular procurement, relating to such matters as progress payments (see Appendix E), patent rights (see 18–908), liquidated damages, or Buy American Act (see 7–2003.65);

(xiv) any applicable wage determinations of the Secretary of Labor (see Section XVIII, Part 7);

(xv) identification of special factors, such as Government costs or other expenditures, including reliability and maintainability requirements, which must be considered in the evaluation of proposals;

(xvi) factors other than price (including technical quality where technical proposals are requested), which will be given paramount consideration in the awardihg of the contract;

(xvii) information as to requirements for Certificate of Current Cost or Pricing Data (see 3–807.3);

(xviii) adequate statements of information required to enable evaluation of technical and financial capabilities, and, a statement covering special technical capabilities which the offeror must possess;

(xix) instructions regarding the marking of information which is not to be disclosed to the public or used by the Government for any purpose other than the evaluation of the proposals (see 3–507.1);

(xx) directions for obtaining copies of any documents, such as plans, drawings, and specifications, as well as information as to charge, if any, to be made for drawings and specifications (see 16–401.2(c)(iii)(2)(B));

(xxi) Reserved;

(xxii) description of information required to support proposed prices (subcontract structure, purchasing system, royalty, and cost and price information) (see Section III, Part 8, Section IX, Part 1, and Section XXIII);

(xxiii) a statement of small business set-asides;

(xxiv) required representations regarding small business status;

(xxv) except when a waiver has been granted (see 18–110) prior to solicitation, if the solicitation contains one or more items subject to statutory cost limitation, the *Cost Limitation* provision in 7–2003.27;

(xxvi) provisions for performance of work by contractor, see 18–104 and 2–201(b)(xxxi);

(xxvii) estimated magnitude of the proposed construction, see 18–109, where not provided in a pre-invitation notice (see 18–205);

(xxviii) the provision in 7-2003.40;

(xxix) if the contract is to be conditioned on the availability of funds, a clear statement of such condition (see 1-318);

(xxx) such general contract provisions or conditions as are required by law or by this Regulation;

(xxxi) Reserved;

(xxxii) when the acquisition involves a set-aside for small business concerns, the following provision will be placed on the face of the solicitation form or on a cover sheet:

THIS IS A ....% SET ASIDE FOR SMALL BUSINESS CONCERNS.

(xxxiii) a statement that prospective offerors may submit inquiries by writing or calling (collect calls not accepted) Mr. (insert name and address; telephone area code, number, and extension);

(xxxiv) Requests for Proposals which will result in the placement of rated orders or Authorized Controlled Material Orders (see 1-307) shall contain the clause in 7-2003.22;

(xxxv) a statement requesting the prospective offeror to list the names and telephone numbers of persons authorized to conduct negotiations;

(xxxvi) if the contract is pursuant to the Balance of Payments Program, the procedures in 6-802 are applicable;

(xxxvii) in accordance with 6-1104, the provision in 7-2003.62;

(xxxviii) unless exempted by 12-805 from inclusion of the Equal Opportunity clause—

(A) on the face page or cover sheet of the solicitation, these notices:

I. NOTE THE AFFIRMATIVE ACTION REQUIREMENT OF THE EQUAL OPPORTUNITY CLAUSE WHICH MAY APPLY TO THE CONTRACT RESULTING FROM THIS SOLICITATION.

II. NOTE THE CERTIFICATION OF NONSEGREGATED FACILITIES IN THIS SOLICITATION. Bidders, offerors and applicants are cautioned to note the "Certification of Nonsegregated Facilities" in the solicitation. Failure of a bidder or offeror to agree to the certification will render his bid or offer nonresponsive to the terms of solicitations involving awards of contracts exceeding $10,000 which are not exempt from the provisions of the Equal Opportunity clause. (1975 OCT)

(B) the applicable provisions in 7-2003.14(b), (c), and (d);

(xxxix) the applicable small business size standard (see 1-701 and 1-703);

(xl) *Reserved;*

(xli) if pursuant to 1-1504, options are to be evaluated for award, the applicable *Evaluation of Options* provision shall be inserted;

(xlii) if 1-1503(d) applies, a conspicuous notice cautioning offerors that an offer containing an option price higher than the base price may be accepted only if such acceptance does not prejudice any other offeror; (This may be placed elsewhere so long as the notice is adjacent to the limitation as to option price.)

(xliii) any requirement for royalty information to be furnished with the offer, proposal or quotation (see 9-110(a));

(xliv) when the contract is for the purchase of a patented item for which the Government is a licensee (1-304.3), include the provision in 7-2003.15;

(xlv) a statement on the first sheet or on a cover sheet of the Request for Proposals that:

> PROPOSALS MUST SET FORTH FULL, ACCURATE, AND COMPLETE INFORMATION AS REQUIRED BY THIS REQUEST FOR PROPOSAL (INCLUDING ATTACHMENTS). THE PENALTY FOR MAKING FALSE STATEMENTS IN PROPOSALS IS PRESCRIBED IN 18 U.S.C. 1001.

(xlvi) a statement of arangements to be made for inspecting the site, including designation of the person or persons, if any, with whom such arrangements may be made and who will answer questions or furnish information;

(xlvii) information which may affect performance of the work such as boring samples, original boring logs, etc.;

(xlviii) information as to what utilities the Government will furnish during construction, when the contracting officer determines that any new utilities are adequate for the needs of both the Government and the contractor (see 7-603.30);

(xlix) Reserved;

(l) Reserved;

(li) (A) in accordance with 3-1203(a), insert the provision in 7-2003.67(a);
(B) in accordance with 3-1204, insert the provision in 7-2003.67(b);
(C) in accordance with 3-1213(a), insert the provision in 7-2003.67(c);

(lii) the *Late Technical Proposals* provision in 7-2002.3, or the Late Proposals provision in 7-2002.4, (these replace paragraphs 7 and 8 of SF 22);

(liii) if international air transportation of personnel and cargo is possible during performance of the contract, the clause in 7-104.95;

(liv) the *Contingent Fee* provision in 7-2002.1 shall be substituted for paragraph 3 of SF 19-B;

(lv) the *Clean Air and Water Certification* in 7-2003.71;

(lvi) Reserved;

(lvii) when the statement of work requires the design, development or operation of a system of records on individuals for an agency function, insert the provision in 7-2003.72;

(lviii) if the contract is for the acquisition of goods or services for MAP, IMET, or FMS, include the clause in 7-104.97;

(lix) if the contract includes FMS requirements, identify the contract by clearly stamping or otherwise indicating "*FMS Requirement*" on the cover sheet of the contract;

(lx) if the contract is expected to exceed $500,000, include the clause in 7-104.78 (Overseas Distribution of Defense Subcontracts) when required by 1-340;

(lxi) when Government specifications are incorporated requiring utilization of recovered materials, insert the certification in 7-2003.82.

(lxii) when the provisions of the Buy American Act or the Balance of Payments Program apply, include the clauses in 7-104.3, 7-104.32, 7-2003.47, and 7-104.106 as prescribed in 6-104.5, 6-803.1(e).

(lxiii) for solicitations involving FMS requirements, insert the clause in 7-104.107 concerning special limitations with respect to sales commissions and fees, when required by 6-1305.6.

(lxiv) when the solicitation is subject to an in-house versus contract cost comparison (Section IV, Part 12), include the clause in 7-2003.89(b).

(lxv) insert the solicitation provision at 7-2003.90 requesting the offeror to supply his Data Universal Numbering System (DUNS) Number with his offer.

(lxvi) when the solicitation imposes partial or total small business set-aside procedures pursuant to 1-706.5 and 1-706.6, or is for a combined small business-labor surplus area set-aside procurement pursuant to 1-706.7 and is expected to result in award of a contract during fiscal year 1981, 1982, or 1983, insert the Certification of Handicapped Organizations representation in 7-2003.91. The contracting officer may rely on an offeror's self-certification that it qualifies as an eligible organization as defined in 7-2003.91. Questions concerning the eligibility of offerors shall be processed in accordance with procedures in 1-703.

(lxvii) for contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(d) *Oral Solicitations.*

(1) Oral solicitations are authorized for small purchases (see Section III, Part 6) and for the acquisition of perishable subsistence.

(2) Oral solicitations, other than those described in (1) above, are authorized in cases where the processing of a written solicitation would delay the furnishing of the supplies or services to the detriment of the Government. Examples of such circumstances may include those listed in 3-202.2. However, oral solicitation is not to be considered justified solely because a high issue Priority Designator has been assigned to the requirement. In addition to other applicable documentation requirements (see 1-308), the record of contract actions above shall include a resume of the circumstances that justified use of an oral solicitation, item description, quantity, deliveries required, sources solicited, prices quoted (including name of individual contacted), date and time contacted, and the solicitation number (see 20-203) provided the prospective sources. Should the issuance of the resulting contractual instrument be unduly delayed, the contract file should be documented to describe the reasons for the delay and justify award based upon the oral solicitation.

(3) Use of oral solicitation does not relieve the contracting officer from complying with other applicable portions of this Regulation; e.g., the appropriate requirements of (b) above, postaward notice of offerors (see 3-508.3), price negotiation policies and techniques (Section III, Part 8), and submission of same terms and conditions to all offerors.

(e) *Master Solicitation.* Master solicitation for negotiated contracts may be established, maintained, and utilized in accordance with 2-201(c).

3-502 Solicitation for Informational or Planning Purposes. See 1-309.

3-503 Methods of Soliciting Proposals.

3-503.1 *Bidders Mailing Lists.* Bidders mailing lists for negotiated contracts shall be established, maintained, and utilized in accordance with 2-205.

3-503.2 *Delivery of Solicitations to Prospective Offerors.* When a purchasing office is located in the United States, any solicitation sent to a prospective offeror located at a foreign address shall be sent by international air mail, if security classification permits.

3-504 Pre-proposal Conferences.

3-504.1 *General.*

(a) The pre-proposal conference is a procedure which may be used, generally in complex negotiated acquisitions, as a means of briefing prospective offerors after a solicitation has been issued but before offers or proposals are prepared.

(b) Such a conference permits the Government to explain or clarify complicated specifications and requirements to interested firms. It may also be used to provide an opportunity for interested firms to examine a model of the equipment being acquired, where for reasons such as security or limited quantities, such model can only be shown at a specific time and location.

3-504.2 *Procedure.*

(a) When it is determined to be in the best interests of the Government to hold a pre-proposal conference, the contracting officer shall make the necessary arrangements and shall notify all those to whom solicitations have been issued as to the time, place, and general nature of the proposed conference. Such a determination may be made as a result of questions and problems raised by prospective offerors. Adequate notice shall be given to prospective offerors, including qualifying country sources (6-001), so that all who wish to may arrange for representation. The notice shall define as explicitly as possible the nature and scope of the conference. If time permits, prospective offerors should be asked to submit any questions they may have in advance, in order to give the purchasing office time to prepare and to make the conference as fruitful as possible.

(b) The pre-proposal conference shall be conducted by the contracting officer or his representative, and attended by technical and legal personnel as appropriate.

(c) All prospective offerors shall be furnished identical information in connection with the proposed acquisition. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgment and receipt of solicitation amendments shall be applied. A complete record shall be made of the conference.

3-505 Amendment of Request for Proposals and Request for Quotations—Prior to Closing Date.

(a) If, after issuance of a request for proposals or quotations but before the closing date of their receipt, it becomes necessary to make a significant change in quantity, specifications, or delivery schedules, or to make any change in closing dates, or to correct a defect or ambiguity, the change shall be accomplished by issuance of an amendment to the request, whether or not a preproposal conference is held. Standard Form 30 (see 16-102.3) shall be used for amending a request for proposals. Requests for quotations may be amended by letter.

(b) When it is considered necessary to issue an amendment to a request for proposals or request for quotations, the period of time remaining before closing and the need for extending this period by postponing the time set for closing must be considered. Where only a short time remains before the time set for closing, consideration should be given to notifying offerors or quoters of an extension of time by telegram or telephone. Such notification should be confirmed in the amendment.

(c) Any information given to a prospective offeror or quoter concerning a request for proposals or request for quotations shall be furnished promptly to all other prospective offerors or quoters as an amendment to the request, whether or not a pre-proposal conference is held, if such information is necessary to offerors or quoters in submitting proposals or quotations on the request, or if the lack of such information would be prejudicial to uninformed offerors or quoters. No award shall be made on a request for proposals unless such amendment thereto has been issued in sufficient time to permit prospective offerors to consider such information in submitting or modifying their proposals.

3-506 Late Proposals and Modifications of Proposals.

(a) This paragraph does not apply to simplified small purchases made pursuant to Section III, Part 6.

(b) Offerors are responsible for submitting proposals and modifications of proposals, including final modifications at the conclusion of negotiations, so as to reach the designated Government office on time. Proposals and modifications of proposals received in the office designated in the request for proposals after the exact time specified are "late" and shall be considered only if the circumstances outlined in the provision in 7-2002.4 are applicable. Unless a specific time for receipt of proposals is stated in the request for proposals, the time for receipt shall be the time for normal close of business of the office designated for receipt of proposals on the date proposals are due.

(c) When a late proposal or modification of proposal is received and it is clear from available information that it cannot be considered for award, the Contracting Officer shall promptly notify the offeror that it was received late and will not be considered (see also 3-506(e)). Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 would suffice. However, when a late proposal or modification of proposal is transmitted by registered or certified mail and is received before award but it is not clear from available information whether it can be considered, the offeror shall be promptly notified substantially in accordance with the notice in 2-303.2, appropriately modified to relate to proposals and, if necessary, to telegraphic proposals.

(d) The normal revisions of proposals by offerors selected for discussion during the usual conduct of negotiations with such offerors are not to be considered as late proposals or late modifications to proposals.

(e) Late proposals and modifications of proposals which are not considered shall be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(f) The following shall, if available, be included in the purchase office files with respect to each late proposal or modification of proposal:

(i) the date of mailing, filing, or delivery, as the case may be;
(ii) the date and hour of receipt;
(iii) whether or not considered for award; and
(iv) the wrapper or other evidence if considered for award.

3-507 Treatment of Procurement Information.

3-507.1 *Restrictions on Disclosure and Use of Data in Proposals and Quotations.*

(a) A proposal, whether solicited or unsolicited, may include data, such as a technical design or concept or financial and management plan, which the offeror does not want disclosed to the public for any purpose or used by the Government for any purpose other than evaluation of the proposal. If an offeror wishes so to restrict his proposal, he shall mark the title page with the following legend:

> This data, furnished in connection with Request for Proposals No. ....*, shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than to evaluate the proposal; *provided*, that if a contract is awarded to this offeror as a result of or in connection with the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the contract. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction is contained in Sheets .... (1966 DEC)
>
> *If proposal is unsolicited (see 4-101(c)), delete "furnished in connection with Request for Proposals No..............."

The offeror shall mark each sheet of data which he wishes to restrict with the following legend:

> Use or disclosure of proposal data is subject to the restriction on the Title page of this Proposal. (1966 DEC)

Contracting officers and other Government personnel shall not refuse to consider any proposal merely because it or the data submitted with it is so marked. Those portions of the proposal and data which are so marked (except for information which is also obtained from another source without restriction) shall be used only to evaluate the proposal and shall not be disclosed outside the Government without the written permission of the offeror. If it is desired to duplicate, use, or

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disclose the data of the offeror to whom the contract is to be awarded, for purposes other than to evaluate the proposal, the contract should so provide. (See 9-201 for a description of "data" and Section IX, Part 2, in general, for the policy, instructions, and contract clauses with respect to the acquisition and use of data.)

(b) Proposals or quotations of subcontractors which are included as part of a proposal submitted by a prime-offeror may be marked as provided in (a) above.

(c) Records or data, other than the types of items listed in 1-329.1(b), bearing such a legend may be otherwise subject to release under the terms of the Freedom of Information Act, 5 U.S.C. 552, as amended (see 1-329). It is to be noted, however, that absent a request for such records or data pursuant to the statutory provisions, and the subsequent determination of releaseability, the legend shall be honored in accordance with (a) above.

(d) Proposals, solicited and unsolicited, shall be maintained and disposed of pursuant to 1-308 and related S2-102.1(x) and S2-501.

(e) See Part 9 of Section IV for further provisions with respect to unsolicited proposals.

3-507.2 *Disclosure of Information During the Pre-Award or Pre-Acceptance Period.*

(a) *General.* After receipt of proposals or quotations, no information contained in any proposal or quotation or information regarding the number or identity of the offerors shall be made available to the public, or to anyone within the Government not having a legitimate interest therein, as expressly provided by this Regulation. However, the negotiated price of the potentially selected offer shall be made available to the public in accordance with 4-1203.4(b)(3) when the procedures therein are used.

(b) *Equal Consideration and Information to All Prospective Contractors.* Discussions with prospective contractors regarding a potential procurement and the transmission of technical or other information shall be conducted only by the contracting officer, his superiors having contractual authority or others specifically authorized. Such personnel shall not furnish any information to a potential supplier which alone or together with other information may afford him an advantage over others. However, general information which would not be prejudicial to others may be furnished upon request *e.g.*, explanation of a particular contract clause or a particular condition of the schedule. When necessary to clarify ambiguities, or correct mistakes or omissions, an appropriate amendment to the solicitation shall be furnished in a timely manner to all to whom the solicitation has been furnished. See 3-505.

3-508 Information to Offerors.

3-508.1 *General.* Notice shall be provided offerors in accordance with 3-508.2 and 3-508.3 below. Such notice need not be given where disclosure may in some way prejudice the Government's interest or where the contract is:

- (i) for subsistence;
- (ii) negotiated pursuant to 10 U.S.C. 2304(A)(4), (5), or (6) (see 3-204, 3-205, or 3-206);
- (iii) negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited.

3-508.2 *Pre-Award Notice of Unacceptable Offers.*

(a) In any procurement in excess of $10,000 in which it appears that the period of evaluation of proposals is likely to exceed 30 days or in which a limited number of suppliers have been selected for additional discussion (see 3-805), the contracting officer, upon determination that a proposal is unacceptable, shall provide prompt notice of that fact to the source submitting the proposal. Such notice need not be given where the proposed contract is to be awarded within a few days and notice pursuant to 3-508.3 below would suffice. In addition to stating that the proposal has been determined unacceptable, notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise that, since further negotiation with him concerning this procurement is not contemplated, a revision of his proposal will not be considered.

(b) In any procurement involving a small business set-aside to be placed through conventional negotiation, upon final completion of negotiations and determinations of responsibility but prior to award, the contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated, and no further contact with the contracting officer need be made regarding the instant procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s). This notification procedure shall not apply to procurements exempt by 3-508.1 above or to any urgent procurement action which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

3-508.3 *Post-Award Notice to Offerors.*

(a) Promptly after making all awards in any procurement in excess of $10,000, the contracting officer shall give written notice to the unsuccessful offerors that their proposals were not accepted, except that such notice need not be given where notice has been provided pursuant to 3-508.2(a). Such notice shall include:

(i) the number of prospective contractors solicited;
(ii) the number of proposals received;
(iii) the name and address of each offeror receiving an award;
(iv) the items, quantities, and unit prices of each award; *provided* that, where the number of items or other factors makes the listing of unit prices impracticable, only the total contract price need be furnished; and
(v) in general terms, the reasons why the offeror's proposal was not accepted, except where the price information in (iv) above readily reveals such reason, but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(b) In procurements of $10,000 or less and subject to the exceptions in 3-508.1 above, the information described in (a) above shall be furnished to unsuccessful offerors upon request.

(c) Such information as is authorized to be released to unsuccessful offerors pursuant to (a)(i) through (iv) above may, upon his request, be provided to the successful offeror.

3-508.4 *Debriefing of Unsuccessful Offerors.*

(a) Offerors under negotiated procurements generally expend substantial time and effort in preparing their proposals. Therefore, those offerors not selected for contract award have a significant interest in learning why they were unsuccessful. Debriefing is the process by which purchasing offices provide unsuccessful offerors with the Government's evaluation of the significant factors contained in their proposals, citing determinative deficiencies and weaknesses. An adequate debriefing can provide the basis upon which offerors may improve future proposals and, in addition, give assurance that the selection has been handled fairly, in accordance with applicable regulations and the provisions of the solicitation.

(b) When a contract is awarded on some basis other than price, unsuccessful offerors shall be debriefed upon their written request, and furnished the basis for the selection decision and contract award. Debriefings shall be provided at the earliest feasible time after contract award. They shall be conducted by purchasing office officials familiar with the rationale for the selection decision and contract award.

(c) It is essential that debriefings be conducted in a scrupulously fair, objective and impartial manner. Debriefing information given offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made. Furthermore, debriefings shall not reveal: (i) trade secrets; (ii) privileged or confidential manufacturing processes and techniques; (iii) commercial and financial information which is privileged or confidential, including cost breakdowns, profit, overhead rates, and similar information; or (iv) the relative merits or technical standing of competitors or the evaluation scoring.

(d) A summary of the debriefing shall be made a part of the contract file.

3-508.5 *Classified Information.* Classified information shall be furnished only in accordance with regulations governing classified information.

3-509 Protests Against Award. Protests against awards of negotiated procurements shall be treated substantially in accordance with 2-407.8.

3-510 Reserved.

Part 6—Small Purchase and Other Simplified Purchase Procedures

3-600 Scope of Part. This Part sets forth simplified procedures for the procurement of supplies, nonpersonal services, and construction, the aggregate amount of which does not exceed $10,000, which are referred to in this Part as "small purchases." It also applies to certain other supplies and services. This Part does not preclude the use of bilateral purchase orders (see 3-608.4); Standard Form 19 for construction contracts (see 16-402.2 and 18-302); or a negotiated two-party formal contract for procurements not in excess of $10,000, for example where the procurement is classified or requires specific contract provision relating to technical inspection or test, specification changes, Government-furnished property, insurance, patents, price adjustments, or the like. When the total cost of services to repair Government equipment does not exceed $10,000, such services may be obtained by purchase orders or other appropriate small purchase method, regardless of the value of the Government equipment being repaired (see 3-608.2(b)(1)(viii)), except as provided in 3-608.2(b)(2). Procurements of supplies and services or construction initially estimated to exceed $10,000 shall not be made by the small purchase method, even though resulting awards do not exceed such amounts.

3-601 Purpose. The objective of the simplified purchase methods prescribed herein is to reduce administrative costs.

3-602 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) *Bulk funding concept* means a system whereby a contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document.

(b) *Mail indicia* means the official printed markings substituted for stamps, *i.e.*, "Postage and Fees Paid" and appropriate department. This includes such markings on envelopes, cards, labels, wrappers, or tags.

(c) *Local delivery* means the movement of supplies or commodities wholly within a recognized metropolitan area in which both the point of pickup and the point of delivery are located.

3-603 Policy.

3-603.1 *General.*

(a) All purchases covered by this Part shall be accomplished by negotiation and shall cite the appropriate subparagraph of 10 U.S.C. 2304(a) in accordance with Part 2 of this Section. Such purchases shall be made only when requirements cannot be satisfied by procurement in accordance with Section V. The contracting officer shall use the purchase method covered by this Part which he determines to be most suitable to the immediate requirement and most efficient and economical. Simplified procedures may be used in procurements from Government established sources, if authorized by the basic contract or concurred in by the source.

(b) Requirements aggregating more than $10,000 shall not be broken down into several purchases which are less than $10,000 merely for the purpose of permitting negotiation under the small purchase procedures authorized by this Part. Related items (such as small hardware items or spare parts for vehicles) may be included in one solicitation, and the award made on "all or none" basis. In such cases, suppliers shall be advised of this award procedure when quotations are requested.

(c) The "bulk funding" concept shall be used to the maximum extent practicable to reduce processing delays, double handling, and documentation. Bulk funding is particularly appropriate when numerous purchases using the same type of funds are to be made during a given period.

(d) Installation or activity transportation facilities may be used for delivery from local suppliers to the purchasing installation only after consideration of the following methods:

(i) supplier delivery;
(ii) common carrier;
(iii) parcel post; and
(iv) mail indicia.

(e) Inspection procedures for small purchases shall be in accordance with 14-308.

(f) The use of United States-owned foreign currency in making payments for small purchases shall be in accordance with Section VI, Part 11.

(g) Each acquisition of supplies and services which has an anticipated value not in excess of $10,000 and which is subject to the small purchase procedures set forth in this part is a small business-small purchase set-aside (1-702(c)) unless the contracting officer (i) determines there is no reasonable expectation of obtaining two or more quotations for purchases in excess of $500 or at least one quotation for purchases not in excess of $500; or (ii) is unable to obtain quotation(s) that are, in either case, competitive with market prices in the industry and competitive in terms of quality and delivery as outlined in 3-604. In the event that the small business-small purchase set-aside is dissolved in accordance with (g)(ii), new quotes shall be solicited on an unrestricted basis. In automated contracting systems, all proposed acquisitions pursuant to small purchase procedures will be screened for reservation in accordance with the criteria in this paragraph. When source lists are maintained for acquisitions not exceeding $10,000, these source lists shall include all known small business concerns. The names of such concerns shall be obtained from the activity Small and Disadvantaged Business Utilization Specialist who, in turn, may request support from the SBA Procurement Center Representative or other Federal and private sources which maintain lists of small business concerns. Foreign concerns shall not be solicited nor awarded acquisitions reserved for small business concerns.

(h) In other acquisitions using small purchase procedures, solicitation of foreign firms located in qualifying countries (see 6-001 and 6-1043.1(a)) is not required unless determined to be in the best interests of the Government.

(i) When the acquisition is not reserved, quotations based on supplying foreign end products shall be evaluated in accordance with the procedures in 6-104.4.

3-604 Competition and Price Reasonableness.

3-604.1 *Purchases Not in Excess of $500*. Small purchases not exceeding $500 may be accomplished without securing competitive quotations if the prices are considered to be reasonable. Such purchases shall be distributed equitably among qualified suppliers. When practical, a quotation will be solicited from other than the previous supplier prior to placing a repeat order. The administrative cost of verifying the reasonableness of the price of purchases not in excess of $500 may more than offset potential savings in detecting instances of overpricing; therefore, action to verify the reasonableness of the price need be taken only when the buyer or contracting officer suspects or has information (e.g., comparison to previous price paid, personal knowledge of the item involved) to indicate that the price may not be reasonable. In some cases, e.g., first buy of new items, action to verify may also be required to determine whether or not the price is reasonable.

3-604.2 *Purchases in Excess of $500.*

(a) Solicitation of quotations from a reasonable number of qualified sources of supply shall be made to assure that the procurement is to the advantage of the Government, price and other factors considered, including the administrative cost of the purchase. Generally, solicitation shall be limited to three suppliers and, to the maximum extent possible, shall be restricted to the local trade area of either the purchasing or the receiving activity. If practicable, two sources not included in the previous solicitation should be requested to furnish quotations. Quotations should generally be solicited orally except for construction contracts in excess of $2,000. Written solicitations should be used when (i) the suppliers are located outside the local area, (ii) special specifications are involved, (iii) a large number of line items are included in a single proposed procurement, or (iv) obtaining oral quotations is not considered economical or possible.

(b) Reasonableness of a proposed price should be based on competitive quotations. If only one response is received, or the price variance between multiple responses reflects lack of adequate competition, a statement shall be included in the contract file setting forth the basis of the determination of fair and reasonable price. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases, current price lists, catalogs, advertisements, similar items in a related industry, value analysis, the contracting officer's personal knowledge of the item being procured, or any other means. Written records of solicitation may be limited to notes or abstracts to show vendor or vendors contacted, prices, delivery, and any other informal historical data. If a separate form is used for documentation of price reasonableness, DD Form 1784, Small Purchase Pricing Memorandum, shall be used (see 16-813). If this form is not used, the price reasonableness statement shall be based on one or more of the criteria set forth on the form. In any case, the con-

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tracting officer should gain as much knowledge as practicable of the physical and material characteristics and intended use of the item to be purchased. When only one source is solicited, an additional notation must be made to explain the absence of competition, except for procurement of utility services available only from one source or of educational services from nonprofit institutions. Notification to unsuccessful suppliers shall be given only if requested.

(c) Occasionally an item can be obtained only from a supplier who quotes a minimum order price or quantity, which either unreasonably exceeds stated quantity requirements, or results in an unreasonable price for the quantities required. If practicable before placing the order the requiring activity should be informed in such cases of all facts regarding the quotation and requested to confirm or alter its requirement for the item or items under consideration. The file shall be documented to support the final action taken.

3-605 Blanket Purchase Agreement (BPA).

3-605.1 *General.* A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing "charge accounts" with qualified sources of supply (see 12-302, 12-602.1 and 12-1001). Blanket purchase agreements are designed to reduce administrative costs in accomplishing small purchases by eliminating the need for issuing individual purchase documents.

3-605.2 *Limitation on Use.* A blanket purchase agreement may not be used when a call exceeds $10,000 except that BPA calls for subsistence are unlimited as to dollar value. The *Examination of Records by Comptroller General* clause in 7-104.15 and the *Listing of Employment Openings* clause in 7-103.27 shall be included in agreements for subsistence items which do not limit the dollar value of individual calls to less than $10,000.

3-605.3 ***Establishment of Blanket Purchase Agreements.***

(a) *Alternate Sources.* To the extent practicable, blanket purchase agreements for items of the same type should be placed concurrently with more than one supplier. All competitive sources should be given an equal opportunity to furnish supplies or services under such agreements.

(b) *Form.*

(1) Except as provided in (2) below, blanket purchase agreements shall be prepared and issued on DD Form 1155 (Order for Supplies or Services/Request for Quotations). Either the "General Provisions," DD Form 1155r, or the "Reverse of Order for Supplies or Services/Request for Quotations—Foreign," DD Form 1155r-1, as applicable, shall be used. Other applicable provisions of the blanket purchase agreement shall be set forth on the Standard Form 36 (Continuation Sheet) or on a blank sheet of paper, including the following:

(i) the Contract Work Hours and Safety Standards Act—Overtime Compensation clause in 7-103.16(a) shall be added unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(ii) where the agreement is for the intended purchase of services covered by the Service Contract Act of 1965, as amended, the clause in 7-1903.41(a) or (b) shall be substituted for Clause 16 of the General Provisions and the procedures in 12-1005 complied with, unless it is reasonably anticipated that the aggregate of the total dollar amounts of orders to be placed thereunder will be $2,500 or less;

(iii) where the agreement is for the intended purchase of supplies, the Walsh-Healey Public Contracts Act clause in 7-103.17 shall be added, unless the agreement limits the aggregate total of orders to be placed thereunder to $10,000; and

(iv) where the agreement is for the intended purchase of supplies, the applicable equal opportunity clause in 7-103.18 shall be added.

(2) Blanket purchase agreements issued by the Defense Personnel Support Center may be prepared on its form "Order for Subsistence."

(c) *Numbering.* Enter the Procurement Instrument Identification (PII) number as prescribed in Section XX, Part 2.

(d) *Accounting Data.* Blanket purchase agreements need not cite any accounting data so that purchases utilizing different appropriation data may be made under the same agreement.

(e) *Negotiation Authority.* The Schedule of each agreement shall be annotated as follows:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), or 10 U.S.C. 2304(a)(17).

If for the purchase of subsistence:

> The issuance of individual calls under this blanket purchase agreement will be made under the authority of 10 U.S.C. 2304(a)(1), 10 U.S.C. 2304(a)(3), 10 U.S.C. 2304(a)(6), 10 U.S.C. 2304(a)(9), or 10 U.S.C. 2304(a)(17).

This annotation shall not be duplicated on forms used to document individual calls, although the specific authority for the call may be cited therein.

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(f) *Terms and Conditions*. Blanket purchase agreements shall contain the following provisions:

(i) *Description of agreement*—a statement that the supplier shall furnish supplies or services, described therein in general terms, if and when requested by the contracting officer or his authorized representative during a specified period and within a stipulated aggregate amount, if any. Blanket purchase agreements may be limited to specific items or commodity groups or the scope of the agreement may encompass all items that the supplier is in a position to furnish.

(ii) *Extent of obligation*—a statement that the Government is obligated only to the extent of authorized calls actually placed against the blanket purchase agreement.

(iii) *Pricing*—a statement that the prices to the Government shall be as low as, or lower than those charged the supplier's most favored customer, in addition to any discounts for prompt payment.

(iv) *Call limitation*—a statement that no individual call under the agreement shall exceed $10,000 or such higher limitation set forth in 3-605.2.

(v) *Notice of individuals authorized to place calls and dollar limitations*—a provision that a list of names of individuals authorized to place calls under the agreement, identified by organizational component, and the dollar limitation per call for each individual shall be furnished the supplier by the contracting officer.

(vi) *Delivery tickets*—a requirement that all shipments under the agreement, except subscriptions and other charges for newspapers, magazines, or other periodicals shall be accompanied by delivery tickets or sales slips which shall contain the following minimum information—

(A) name of supplier;
(B) blanket purchase agreement number;
(C) date of call;
(D) call number;
(E) itemized list of supplies or services furnished;
(F) quantity, unit price, and extension of each item less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, *provided* that the invoice is itemized to show this information); and
(G) date of delivery or shipment.

(vii) *Invoices*—one of the following statements:

(A) A summary invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipted copies of the delivery tickets; or

(B) An itemized invoice shall be submitted at least monthly or upon expiration of the blanket purchase agreement, whichever first occurs, for all deliveries made during a billing period and for which payment has not been received. Such invoices need not be supported by copies of delivery tickets; or

(C) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated *provided* that:
- (i) a consolidated payment will be made for each specified period; and
- (ii) the period of any discounts will commence on final date of billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

The provision in (C) above should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method.

(D) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that orders have been placed in effect or will be placed in effect upon receipt of payment.

(viii) The special data required by 3–606.3(b) when it is desired to use the fast payment procedure. Also see Block 16 of DD Form 1155.

3–605.4 *Competition Under Blanket Purchase Agreement.* Calls against blanket purchase agreements shall be placed only after compliance with 3–604. When concurrent agreements [illegible] similar items are in effect, calls not in excess of $500 shall be equitably distributed. In those instances where there are an insufficient number of BPAs for any given class of supplies or services to assure adequate competition, the individual placing the order shall solicit quotations from other sources.

3–605.5 *Calls Against Blanket Purchase Agreements.* Calls against blanket purchase agreements generally will be made orally, except that informal correspondence may be used when ordering against agreements outside the local trade area. Written calls may be executed on DD Form 1155. Documentation of calls shall be limited to essential information. Forms may be developed for this purpose locally.

3–605.6 *Receipt and Acceptance of Supplies or Services.* Acceptance of supplies or services shall be indicated by signature and date on the appropriate form by the authorized government representative after verification and notation of any exceptions. Use of the DD Form 250 Series, Material Inspection and Receiving Report (MIRR), shall be required by purchasing offices to document receipt and acceptance of supplies or services when the purchase is to be assigned to another activity for administration. A sales slip, delivery ticket, DD Form 1155 or DD Form 250 Series may be used for receipt and acceptance when purchases are retained for administration.

3–605.7 *Review Procedures.* The contracting officer or his designated representative shall review the blanket purchase agreement files at least semi-annually to assure that authorized procedures are being followed. When an activity ordering against a blanket purchase agreement does not come under the jurisdiction of the command of the contracting officer issuing the agreement, the command utilizing the blanket purchase agreement shall conduct the necessary review. In addition, the contracting office which entered into the blanket purchase agreement shall also review and update, as required, each blanket purchase agreement at least annually.

3-606 Fast Payment Procedure.

3-606.1 *General.* The fast payment procedure is designed to reduce lead time to consignees and to improve supplier relations by expediting payment for small purchases. The procedure provides for payment for supplies based on the contractor's submission of an invoice which constitutes a representation that the supplies have been delivered to a post office, common carrier or point of first receipt by the Government, and that the contractor agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements. Consignees shall notify the contracting office as soon as possible of supplies not received, damaged in transit, or not conforming to specifications of the purchase order.

3-606.2 *Conditions for Use.* When the conditions set forth below are present, the fast payment procedure should be used to the maximum extent possible, provided such use is consistent with the other conditions of the purchase. Use of the fast payment procedure would not be indicated, for example, in small purchases by posts, camps, and stations when material being purchased is destined for use at such activities and contract administration will be performed by the contracting office of such activities.

(i) Individual orders do not exceed $10,000, except that for purchases of (*a*) brand name commissary resale subsistence and (*b*) commercial type medical supplies for direct shipment overseas, the procedure may be used without limitation (see 7-104.84).

(ii) Title to the supplies will vest in the Government (A) upon delivery to a post office or common carrier for mailing or shipment to destination, or (B) upon receipt by the Government when the shipment is by means other than the post office or common carrier.

(iii) Supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

3-606.3 *Preparation and Execution of Orders.*

(a) Orders shall be issued on Order for Supplies or Services/Request for Quotations (DD Form 1155), except that calls against blanket purchase agreements shall be issued in accordance with 3-605.5. Orders may be either priced or unpriced.

(b) Purchase orders or blanket purchase agreements using fast payment procedures shall include:

(i) a requirement for the supplies to be shipped transportation or postage prepaid;

(ii) a requirement that invoices be submitted direct to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 3-608.3(c));

(iii) the following statement on consignee's copy: *Consignee's Notification to Contracting Activity of Nonreceipt, Damage, or Nonconformance.* The consignee shall notify the contracting office promptly after specified date of delivery in the purchase order, of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, such notification should be made not later than 60 days after specified date of delivery;

(iv) when DD Form 1155 is not used, the clause in 7–104.84(a);

(v) a requirement that outer shipping containers shall be marked "FAST PAY."

3–606.4 *Responsibility for Collection of Debts.* The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see E–602 and E–603).

3–607 Imprest Fund Method.

3–607.1 *General.* An imprest fund is a cash fund of a fixed amount established through an advance of funds, without appropriation charge, to an authorized imprest fund cashier to effect immediate cash payments of relatively small amounts for authorized purchases of supplies and nonpersonal services.

3–607.2 *Establishment of Imprest Funds.*

(a) *Authority.* Commanders of installations and of activities with purchasing authority are authorized to approve the establishment of imprest funds. The number of imprest funds at an installation shall be kept to a minimum and one imprest fund should be sufficient in most instances. Exceptions to this general rule may be justified for isolated activities when the location of the established fund is not readily accessible.

(b) *Amount of Imprest Funds.* The amount of each fund shall be established on the basis of the estimated monthly payments therefrom and the need for replenishment without undue administrative burden, but shall not exceed $5,000. A review shall be made at least quarterly to insure that the fund is not in excess of actual needs, and necessary adjustments shall be made.

(c) *Imprest Fund Cashiers.*

(1) Imprest fund cashiers must be appointed by the head of an installation or activity to make authorized cash payments for materials and nonpersonal services, maintain custody of funds, and file periodic vouchers to account for and replenish the imprest fund. An imprest fund cashier should be established at a convenient location on the installation or activity for the purpose of making payments to vendors or carriers, *e.g.*, in "Central Receiving." Disbursing officers and individuals responsible for originating, approving, and processing requirements are not eligible for appointment as imprest fund cashiers. Exceptions to this rule may be granted by the major headquarters exercising control over the installation or activity. In no event shall an imprest fund cashier have access to or control of more than one imprest fund.

(2) Each appointment and termination of appointment shall be approved by the head of the installation or activity. After approval, administrative orders signed by the appropriate authority shall be issued. Appointment orders shall contain the following:

(i) name of individual and duty station;

(ii) identification of disbursing station for which the cashier will act, including the accounting number assigned thereto;

(iii) specific duties to be performed;

(iv) effective date; and
(v) amount and location of fund.

An alternate cashier may be appointed (see (3) below) on the same order as the principal. Two copies of the orders shall be furnished to cashiers, and one copy each to the disbursing office and the installation or activity purchasing office.

(3) An alternate imprest fund cashier may be appointed to provide service during the absence of the principal cashier. Appointment requirements for principal cashiers shall apply to alternate cashiers. In planned absences of the principal cashier, cash may be advanced by the principal to the alternate in any amount up to the limit of the fund. The principal shall obtain a signed cash receipt from the alternate. Upon resumption of his duties, the principal cashier shall return the cash receipt to the alternate after obtaining paid receipts, subvouchers (see 3-607.4(f)(2)) and residual cash. In the unforeseen absence of the principal cashier, funds may be advanced to the alternate in the normal manner by the disbursing officer. These funds shall be in addition to the amount currently advanced to the principal cashier under the established fund, but shall not exceed the amount of the fund. Upon return of the principal cashier, the alternate shall return paid receipts, subvouchers, and residual cash, to the disbursing officer.

3-607.3 *Conditions for Use.*

(a) Imprest funds may be used in accomplishing small purchases when all of the following conditions are present:

(i) the transaction is not in excess of $150 (*$300 under emergency conditions*);
(ii) the supplies or services are available for delivery within 60 days, whether at the supplier's place of business or at destination; and
(iii) the purchase does not require detailed technical specifications or technical inspection.

(b) Imprest funds may also be used for payment of:

(i) charges for local delivery, parcel post (including c.o.d. postal charges) and line haul or inter-city transportation charges of $75.00 or less for supplies ordered for payment from imprest funds when the vendor is requested to arrange for delivery;
(ii) c.o.d. charges for supplies ordered for payment from imprest funds; and
(iii) civilian volunteers for participation in approved medical research projects.

(c) The conditions for use specified in (a) and (b) above do not preclude the use of imprest funds for other expenditures not related to small purchases (*e.g.*, travel advances, travel expenses, transportation charges, and purchases of postage stamps and transportation tokens or passes), when such expenditures are authorized by other regulations governing the use of imprest funds.

(d) Imprest funds shall not be used for:

(i) payments of salaries and wages;
(ii) advances, other than those authorized in 3-607.4; or
(iii) cashing of checks or other negotiable instruments.

3-607.4 *Procedures.*

(a) *Procurement.* Purchases from the imprest fund shall be based upon an authorized purchase request and shall be made only by personnel authorized by the contracting officer. Orders may be placed orally or by use of Standard Form 1165 (Receipt for Cash—Subvoucher) without soliciting competition when prices are considered to be reasonable, but shall be distributed equitably among qualified suppliers. Prompt payment discounts shall be solicited, and a sales document shall be obtained to support the cash payment. An authorized purchase order form endorsed "Payment to be made from Imprest Fund" may be used when required by supplier for granting Government discounts, or tax exemptions. (Since purchases through the use of imprest funds are of relatively small value, Government tax exemption certificates generally will not be required (see 11-500(b)).) When the proposed purchase price will exceed any stated monetary restrictions on the purchase request, additional authorization shall be obtained prior to making the purchase. Copies of the purchase request document shall be marked to show:

(i) that an imprest fund purchase has been made,
(ii) the unit prices and extensions,
(iii) the supplier's name and address, and
(iv) anticipated date of delivery or pickup.

(b) *Sales Document.* A sales document is a term applied to a supplier's invoice, sales ticket, packing slip, or any other sales instrument containing the following minimum information:

(i) supplier's name and address;
(ii) list of items;
(iii) quantity;
(iv) unit price and extension; and
(v) cash discount, if any.

(c) *Receipt of Material.*

(1) All material purchased through the imprest fund shall be delivered to a designated receiving activity. The receiver shall examine the material to ascertain that the quantities and items described on the purchase request document and the supplier's sales document are present and in satisfactory condition. If the material is acceptable, the receiver shall stamp the supplier's sales document "Received and Accepted," date and sign the document, and pass it to the imprest fund cashier for payment. A supplier's sales document, a receipted Standard Form 1165 (Receipt for Cash—Subvoucher), DD Form 1155 (Order for Supplies or Services/Request for Quotations), or DD Form 1348-1 (DoD Single Line Item Release/Receipt Document) may be used to record the receipt of purchases made from the imprest fund and shall be processed in the same manner. The minimum information specified in (b) above shall be included in the document used to record the receipt of purchases.

(2) When it is not practicable to obtain delivery of material at destination on a c.o.d. basis, advance arrangement may be made for the material to be picked up. The imprest fund cashier may then advance cash to an authorized individual to pick up and pay for the material. Necessary certifications of receipt and acceptance of material shall be obtained on one of the documents as indicated in (1) above. Receipt for cash payment (see (e) below) shall be made on the same document, which will serve as the imprest fund receipt.

(3) When prior arrangements for pick up of material are not practicable, the imprest fund cashier may advance cash to an authorized individual to make a proposed purchase.

(d) *Advance of Funds*. Individuals receiving a cash advance from the imprest fund cashier shall be required to sign the "Interim Receipt for Cash" portion of Standard Form 1165, or an equivalent receipt form. After purchase has been made, the individual will return any unused cash to the imprest fund cashier with the necessary certifications of receipt, acceptance, and cash payment, at which time the imprest fund cashier shall "void" the interim receipt for cash. Cash so advanced should be accounted for daily, but under unusual circumstances cash may be advanced for longer periods.

(e) *Certification of Cash Payment*. The original receipt document (or a copy tendered as the original) presented to the imprest fund cashier for payment shall be stamped with a certification containing the following information:

(i) statement that cash payment was received in full,
(ii) amount paid,
(iii) date of payment, and
(iv) signature and title of supplier or his agent receiving the cash payment.

Alterations or corrections to documents tendered for payment shall be initialed by the person making the change. Changes in the amount paid shall be initialed by the individual receiving payment.

(f) *Responsibilities of Imprest Fund Cashier*.

(1) Pending receipt of material, the imprest fund cashier shall keep a file of purchase request documents covering imprest fund purchases. Prior to payment, or acceptance of the document tendered for settlement of an advance, the cashier shall verify the necessary certification of receipt and the supplier's billed price or the price paid. If the supplier's receipt for cash payment is not obtained for purchases of $15 or less, the imprest fund cashier shall complete the cash receipt document and have the person receiving the fund sign this document. Receipt for U.S. parcel post c.o.d. charges should be obtained on Standard Form 1165. When receipt cannot be obtained for c.o.d. purchases, imprest fund cashiers located in foreign countries are authorized to certify on the receipt document, "Delivered by (name of post office or carrier) no receipt given." The c.o.d. label shall be removed from the parcel and affixed to the receipt document in support of the reimbursement voucher. Imprest fund cashiers at any location may accept a signed c.o.d. receipt to support the subvoucher if the carrier refuses to sign a Government form.

(2) After completion of settlement transaction, each subvoucher shall be numbered consecutively and this number placed on the original of the paid receipt documents. These subvouchers will support the cashier's claim for reimbursement of the imprest fund. The imprest fund cashier will not request duplicate receipt documents, nor retain such documents if provided.

(3) When total charges stated on the sales document are paid, without deduction of discounts offered and earned, or without correction of minor billing errors, action will be taken to obtain a refund from the supplier. Collection action may be waived for refunds of one dollar or less.

(g) *Payments*.

(1) *C.O.D.* Upon presentation of an authorized document with the necessary certification of receipt for supplies or services, the imprest fund cashier or

other authorized individual shall pay the supplier or his agent and obtain the certification of cash payment as set forth in 3-607.4(e).

(2) *Receipt From Common Carrier or Post Office.* When c.o.d. shipments are received or picked up from a common carrier or post office, the certification of cash payment may be accomplished on a list of the packages provided by the post office or common carrier. Such receipt will be supported by copies of the applicable sales documents if available.

(3) *Periodic Payments.* When a blanket purchase agreement is not suitable and it is administratively convenient and agreeable to the supplier, periodic payments from the imprest fund may be made for supplies delivered on a repetitive basis, provided that the accumulated amount of the deliveries for the specified period does not exceed the dollar limitation imposed on the imprest fund method by 3-607.3.

(4) *Failure to Ship C.O.D.* When material is ordered c.o.d. but is shipped by the supplier subject to payment by check, Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal), may be used to make payment. Under these circumstances, the receiver shall prepare the necessary certification of receipt and forward the receipted document through the imprest fund cashier, for attachment of the supporting documents which authorized the shipment and submission to the disbursing officer for payment.

(h) *Reimbursement of Imprest Funds.*

(1) The imprest fund shall be reimbursed by use of Standard Form 1129 (Reimbursement Voucher) supported by cashier's subvouchers. The imprest fund cashier shall prepare and submit Standard Form 1129 in triplicate to the disbursing officer as frequently as necessary, but not less often than monthly. At the close of the fiscal year, a reimbursement voucher covering all remaining subvouchers through 30 September shall be submitted before the closing of the allotment accounts for the month. When required, subvouchers shall be summarized by account to complete the accounting classification block of Standard Form 1129. The subvouchers shall be attached to the original of Standard Form 1129 and submitted to the disbursing officer for reimbursement of the imprest fund. One copy of Standard Form 1129 shall be retained by the imprest fund cashier pending the return of the "paid" copy of the form with the reimbursement checks or currency in the amounts requested by the cashier. Where the imprest fund is reimbursed by mail, or where long delays in reimbursement are encountered, the imprest fund cashier may retain copies of subvouchers until reimbursement is accomplished. When copies are retained, they shall be placed in a sealed envelope identified to the reimbursement voucher involved. When reimbursement is received, the sealed envelope will be presented to the official who signed the Administrative Certificate on the SF-1129 for destruction.

(2) When a supplier refunds cash prior to the submission of Standard Form 1129 covering such payment, the imprest fund cashier shall accept the refund, return the money to the imprest fund, and enter the amount of the refund on the original of the supplier's receipt. When the refund is made subsequent to the submission of the applicable Standard Form 1129, the imprest fund cashier shall enter the amount of the refund on the retained copy of the reimbursement voucher, promptly submit the refund to the disbursing officer, and obtain a receipt.

(i) *Accounting.* Recordkeeping for the imprest fund shall be as simple as possible consistent with the maintenance of adequate controls. A file of supplier's receipts for amounts paid and not yet vouchered for reimbursement, and copies of paid reimbursement vouchers ordinarily will suffice for the records of the imprest fund cashier.

(j) *Review*. The imprest fund cashier shall be required to account for the established fund at any time, by cash on hand, paid suppliers' receipts, unpaid reimbursement vouchers, and interim receipts for cash. Unannounced inspections, including cash counts are required to be made of each imprest fund at least quarterly by qualified individuals who are under the jurisdiction of the Comptroller or Chief Accounting Officer of the installation, where such positions exist, but in any case by individuals, excluding the disbursing officer advancing the funds and subordinates of the imprest fund cashier.

3-608 Purchase Orders.

3-608.1 *General.*

(a) Negotiated purchases of supplies, nonpersonal services and construction not in excess of $10,000 may be effected by using DD Form 1155 (*Order for Supplies or Services/Request for Quotations*) and its ancillary forms (for construction see also 16-402.2); Standard Form 44 (*Purchase Order - Invoice Voucher*) may also be used for material and nonpersonal services not in excess of $2,500.

(b) The DD Form 1155 provides for the arrangement of information in fixed locations, including sequential numbering of all blocks, and within certain of these blocks a code box for inserting alpha-numeric codes. The uniform arrangement of data and the provision for codes will facilitate manual and automated processing of contractual documents and interchange of information between purchasing offices and contract administration activities.

3-608.2 *Order for Supplies or Services Request for Quotations (DD Forms 1155, 1155r, 1155r-1; Standard Form 36; DD Form 1155c-1 and Standard Form 30).*

(a) *Forms.* The following forms may be used to issue purchase orders:

- (i) DD Form 1155 (Order for Supplies or Services/Request for Quotations) which when used with DD Form 1155r in accordance with 3-608.2(b)(1) or with DD Form 1155r-1 in accordance with 3-608.2(b)(2) as appropriate, provides in one document—
  - (A) a purchase order, a blanket purchase agreement, a delivery order under a contract, or delivery order on Government agencies outside the Department of Defense (see Section V);
  - (B) a receiving and inspection report;
  - (C) a property voucher;
  - (D) a public voucher; and
  - (E) a document for acceptance by the supplier.
- (ii) Standard Form 36 (Continuation Sheet) provides additional space or a blank sheet of paper may be used;
- (iii) DD Form 1155c-1 (Commissary Continuation Sheet) (for use on optional basis), provides columns suited for commissary procurements; and
- (iv) Standard Form 30 (Amendment of Solicitation/Modification of Contract) shall be used in all modifications to DD Form 1155 (see 3-608.4).

The foregoing forms may be used as snap-out manifold forms, as cut sheets, or as reproducible masters. In addition, DD Form 1155r or DD Form 1155r-1 may be printed on the reverse of DD Form 1155.

(b) *Conditions for Use.*

(1) *Use as a Purchase Order of Not More Than $10,000 in the United States, its Possessions, and Puerto Rico.* DD Form 1155 is authorized for negotiated purchases of not more than $10,000 within the United States, its possessions, and Puerto Rico, *provided:*

(i) The procurement is unclassified, except that DD Form 1155 may be used for classified procurements if:

(A) the Military Security Requirements clause in 7-104.12 is inserted in the Schedule;

(B) DD Form 254 (Contract Security Classification Specification) (see 16-811) is incorporated in the purchase order; and

(C) the contractor's acceptance of the purchase order is obtained by use of DD Form 1155r at the time of issuance of the order.

(ii) No clause covering the subject matter of any clause set forth in this Regulation, other than clauses on DD Form 1155r (see also 16-303) and clauses referred to in (iii) through (xxxi) below, in 3-608.3, 3-608.4, 14-302, 14-303, 14-304, and 14-306(c), is to be used.

(iii) When the contract specifies the delivery of data, one of the clauses in 7-104.9 shall be added as appropriate in accordance with the instructions contained in Section IX, Part 2.

(iv) When required by Section VI, Part 4, the *Communist Areas* clause in 7-103.15 shall be added.

(v) When required, the *Extent of Quantity Variation* clause in 7-103.4(b) shall be added.

(vi) Reserved.

(vii) The *Material Inspection and Receiving Report (MIRR)* clause shall be inserted in the Schedule as provided by 7-104.62 when the purchase is to be assigned to another activity for administration. The clause may also be inserted when otherwise desired by the purchase office.

(viii) When Government property having an acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair), the appropriate Government Property clause or clauses in 7-104.24 shall be inserted in the Schedule. When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in 7-104.24(f) shall be inserted in the Schedule; *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r.

(ix) When the contract is for Military Assistance Program items, the "United States Products (Military Assistance Program)" certificate in 7-2003.50 and the clause in 7-2003.51 shall be inserted in the Schedule, and Clause 6 of the General Provisions (Foreign Supplies) deleted. In addition, the contractor's signature shall be obtained on DD Form 1155r.

(x) Reserved.

(xi) The clauses in 7-104.48 and 7-104.49 may be used in accordance with the provisions of 1-1208.

(xii) When the contract is for mortuary services:

- (A) the following clauses shall be inserted in the Schedule—
  - (I) the Specification clause in 7-1201.4;
  - (II) the Delivery and Performance clause in 7-1201.7;
  - (III) the Subcontracting clause in 7-1201.8;
  - (IV) the Inspection clause in 7-1902.4;
  - (V) the Professional Requirements clause in 7-1201.11;
  - (VI) the Facility Requirements clause in 7-1201.12; and
  - (VII) the Preparation History clause in 7-1201.13;
- (B) the Additional Default Provision clause in 7-1201.9 shall be inserted in the Schedule, with the following substitution for paragraph (a) and the first sentence of paragraph (b) of that clause:

> (a) This clause supplements the "Termination for Default" clause of this contract.
>
> (b) This contract may be terminated for default by written notice if during the performance of this contract:

- (C) The Changes clause in 7-1902.2 shall be substituted for paragraph 17 of the Additional General Provisions on DD Form 1155r.

(xiii) *Reserved.*

(xiv) When required by 6-305, the clauses in 7-104.13 and 7-104.93 shall be added.

(xv) When required by Section XII, Part 10, the clause in 7-1903.41(a) or (b) shall be added.

(xvi) When required by 19-213.2, the clause in 7-104.74 shall be added.

(xvii) In accordance with 1-330, the clause in 7-104.45(a) or 7-1912 may be inserted.

(xviii) When the contract requires the use of a Government bill of lading or mailing indicia, the clause in 7-104.85 shall be added.

(xix) When a bid guarantee is required in accordance with 10-102, the clause in 7-2003.25 shall be included together with the instructions in 10-102.4.

(xx) When performance and payment bonds are required in accordance with 10-103, pertinent instructions with regard thereto shall be added.

(xxi) *Reserved.*

(xxii) When required by 12-302, the *Contract Work Hours and Safety Standards Act* clause in 7-103.16(a) shall be added.

(xxiii) When required by 7-1903.41(d), one of the Linen Supply Service Contract clauses therein shall be added.

(xxiv) When required by 10-405, the *Insurance* clause in 7-104.65 or 7-603.10 shall be added.

(xxv) When required by 1-706.5, the *Notice of Total Small Business Set-Aside* clause in 7-2003.2 shall be added.

(xxvi) The changes authorized by 16-402.2 shall be incorporated when construction procurements are negotiated in accordance with 18-302.

(xxvii) When required by 19-208.3(a), the clause in 7-104.76 shall be added.

(xxviii) When required by 1-2207.3(c)(1)(iii), the clause in 7-104.38 shall be added.

(xxix) When required by 1-2207.4(c)(1)(iii), the clause in 7-104.46 shall be added.

(xxx) When the contract covers the procurement of goods and services for MAP, IMET, and FMS, the clause in 7-104.97 shall be added.

(xxxi) When required by 12-1302(a), insert the clause in 7-103.28.

(xxxii) If the contract is to involve materials of a hazardous nature, include the clause in 7-104.98 as prescribed by 1-323.2.

(xxxiii) When the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders, the clause in 7-104.60 shall be added. The clause may also be used, with appropriate modification, in contracts for other supplies under the circumstances specified in 7-104.60.

(xxxiv) In accordance with 12-807.1, insert the applicable clause in 7-103.18.

(xxxv) When the purchase order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number, e.g., FMS Case Identifier GY-D-DCA.

(xxxvi) The clause in 7-104.103 may be used in accordance with instructions therein.

(xxxvii) For contracts requiring payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall be identified by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate in effect at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

(2) *Use as a Purchase Order of Not More than $10,000 Outside the United States, its Possessions, and Puerto Rico.* DD Form 1155 and 1155r-1, with executed contractor's acceptance when required, are authorized for negotiated purchases of not more than $10,000 when such purchases are for supplies and services procured and used outside the United States, its possessions, and Puerto Rico, *provided:*

- (i) the procurement is unclassified;
- (ii) no clauses covering the subject matter of any clause set forth in this Regulation, other than clauses set forth in DD Form 1155r-1, are to be used, except that—
  - (A) either the standard foreign Disputes clauses in 7-103.12(b) or that clause as modified in accordance with 7-103.12(c) shall be inserted in the Schedule.
  - (B) When the contract is translated into another language, the Schedule shall contain the provision in 7-2003.44.
  - (C) When Government property having acquisition cost in excess of $50,000 is to be furnished (for use in performance of contract or for repair), the Government Property clause in 7-104.24(a) shall be inserted in the Schedule in accordance with instructions in 7-104.24(b). When Government property having an acquisition cost not in excess of $50,000 is to be furnished for use in performance of the contract or for repair, the Government-Furnished Property (Short Form) clause in 7-104.24(f) shall be inserted in the Schedule in accordance with instructions in that paragraph; *provided* that use of the clause shall be optional when the acquisition cost of property furnished for repair is not in excess of $10,000. When a Government Property clause is inserted in the Schedule, the contractor's signature shall be obtained on DD Form 1155r-1.

(D) A commercial warranty clause may be used in accordance with 1-324.4.

(E) When required by Section VI, Part 3, one of the clauses in 7-104.13 or 7-104.93(a) or (b) shall be added, and in purchases in excess of $2,500, the *Communist Areas* clause in 7-103.15 shall be inserted in the Schedule.

(F) The clause in 7-104.103 may be used in accordance with instructions therein.

The contracting officer may delete the Taxes clause from the DD Form 1155r-1 in purchases under $1,000 if he determines that the administrative burden of securing relief from such taxes would be out of proportion to the relief obtained, *provided*, that such clause shall be included in all contracts in support of NATO infrastructure programs involving the expenditures of funds under Section 503(b) of the Foreign Military Sales Act of 1968 (see 11-403.1(a)).

(c) *Solicitation and Evaluation of Quotations.*

(1) *General.* In using the purchase order method, competition shall be solicited in accordance with 3-604, and every effort shall be made to obtain prompt payment discounts. Written quotations may be solicited by Standard Form 18 (Request for Quotation), DD Form 1155 (Order for Supplies or Services/Request for Quotations), approved automated format, or teletype. When using the DD Form 1155 as a request for quotation, see 3-608.8 for guidance on specific entries required in certain blocks. When using a teletype as a request for quotation, general provisions applicable to the solicitation shall be incorporated by reference.

(2) *Evaluation of Quotations.* Quotations shall be evaluated inclusive of transportation charges from the shipping point of the supplier to the delivery destination. For orders exceeding $500, oral quotations shall be recorded directly on the purchase request, on an abstract sheet, or other appropriate work sheet. Except as provided under the unpriced purchase order method, quotations that are indefinite as to price or based on economic price adjustment or redetermination shall not be considered for award by the purchase order method.

(d) *Preparation and Issuance of Priced Purchase Orders.* All applicable blocks and spaces shall be completed with the required data pursuant to 3-608.8, including the following policy guidance:

(i) Supplies to be purchased will be identified in accordance with Section I, Part 12.

(ii) The quantity of supplies or services shall be specified. For bulk quantity items and those subject to shrinkage, evaporation, miscount, weight or footage variance, etc., a maximum allowable variation (normally not in excess of 10%) shall be specified in the order so that shipments in excess of the order quantity may be accepted if the reason for such excess comes within the Variation in Quantity clause of the order and the aggregate amount of the order does not exceed authorized limitations. The clause set forth in 1-325 will be used to express the permissible variation in quantity.

(iii) Purchase orders shall be issued on a fixed-price basis, except as otherwise provided under 3-608.3 and shall include any trade discounts and offered prompt payment discounts.

(iv) Inspection of small purchase shall be in accordance with 14-308. Orders generally will provide that inspection and acceptance will be at destination and source inspection should be specified only when required by 14-305.2(c). When inspection and acceptance are to be performed at destination, advance copies of the purchase order shall be furnished to consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of material to assure expeditious payment of orders and to obtain prompt payment discounts, except where the fast payment procedure is authorized.

(v) F.O.B. destination shall be specified for supplies to be delivered within the United States, except Alaska and Hawaii, unless there are valid reasons to the contrary.

(vi) The block "Deliver to F.O.B. Point BY" shall contain a definite calendar date by which delivery of supplies or performance of services is required.

(vii) The contracting officer's signature on purchase orders shall be in accordance with 20-101. Facsimile signatures may be used in the production of purchase orders by automated methods.

(viii) Distribution of copies of purchase orders and related forms shall be limited to those copies required for essential administration and transmission of contractual information.

(ix) Purchase orders for subscriptions or other charges for newspapers, magazines or other periodicals, or for other publications, for which advance payment is authorized shall contain the provision in 7-2003.45.

3-608.3 *Unpriced Purchase Order.*

(a) An unpriced purchase order is an order for supplies or services the price of which is not established at the time of issuance of the order. Contracting officers shall assure that suppliers receiving unpriced purchase orders are carefully selected.

(b) An unpriced purchase order may be used only when all of the following conditions are present:

(i) the transaction will not exceed $10,000;

(ii) it is impractical to obtain pricing in advance of issuance of the purchase order; and

(iii) the procurement is for:

- (A) repairs to equipment requiring disassembly to determine the nature and extent of such repairs;
- (B) sole source material for which cost cannot be readily established; or
- (C) supplies or services where prices are known to be competitive but exact prices are not known.

(c) Unpriced purchase orders may be issued by using DD Form 1155 or written telecommunications media (see 3-608.10). A realistic monetary limitation, either for each line item or for the total order, shall be placed on the unpriced purchase order which shall be an obligation subject to adjustment when the firm price is established. Each unpriced purchase order shall contain the provision in 7-2003.46. The contracting officer or his designated representative shall review the invoice price and, if reasonable (see 3-604.2(b)), process it for payment. Controls of outstanding unpriced purchase orders shall be maintained to assure regular followup with suppliers until the order is priced.

3-608.4 *Obtaining Contractor Acceptance and Modifying the Purchase Order.*

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall mark in Block 16 on the DD Form 1155 the box requiring acceptance by the contractor.

(b) Standard Form 30 shall be used to modify the purchase order for administrative or other changes.

- (i) Modifications making administrative changes such as the correction of typographical errors, changes in paying office and changes in accounting and appropriation data do not require contractor acceptance. In addition, the issuance of no cost Amended Shipping Instructions (ASIs) which modify unilateral purchase orders and which have been concurred in by the contractor by telephone or letter do not require contractor acceptance by signature on the Standard Form 30.
- (ii) To otherwise modify the purchase order, and if not previously included in the purchase order, the Additional General Provisions (Clauses 17-20 of DD Form 1155r) shall be incorporated by reference in the Standard Form 30 (Amendment of Solicitation/Modification of Contract), and the contractor acceptance obtained by his signature on the Standard Form 30. Subsequent changes pursuant to the Changes clause shall not require contractor acceptance. However, other modifications outside the scope of the Changes clause, such as the addition of the Government Property Clause, shall require contractor acceptance by signature on the Standard Form 30.

(c) No additional clauses are authorized except as provided in 3-608.2(b) above. A superseding DD Form 1155 shall not be used to issue a change to an outstanding purchase order.

3-608.5 *Termination of Purchase Order.* A purchase order which has not been accepted in writing by the contractor may be withdrawn or canceled by the contracting officer any time prior to the supplier's initiation of performance. Notice of withdrawal or cancellation should be in writing and should request the contractor's acknowledgement thereof. If the contractor has begun performance on such purchase order, however, or if the contractor has accepted the purchase order in writing other than by signature on the DD Form 1155r or on a subsequently issued Standard Form 30, and it later becomes necessary to terminate the purchase order, the contractor should be asked to agree to cancellation of the order without cost or liability to either party. If he agrees, the cancellation shall be effected by use of Standard Form 30, incorporating the Additional General Provisions (DD Form 1155r), signed by the contracting officer and the contractor. If the contractor does not agree to a no-cost settlement, the case will be referred to the legal office serving the installation and action will be withheld pending receipt of advice from that office. Termination of a purchase order which the contractor has accepted in writing by means of the Contractor Acceptance on DD Form 1155r, or a subsequently issued Standard Form 30 will be processed in accordance with the guidance set forth in Section VIII of this Regulation.

3–608.6 *Use of DD Form 1155 as a Delivery Order.*

(a) Except as to specialized procurements for which other instructions are given by this Regulation (as for example, where utility purchases are procured under General Services Administration area contracts, as provided in Section V, Part 8), DD Form 1155 shall be used without monetary limitation as a delivery order for ordering supplies and services:

- (i) under indefinite delivery type contracts (see 3–409) including such contracts made by Government agencies outside the Department of Defense; *provided*, (A) the order is issued in accordance with, and subject to the terms and conditions of such contract, and (B) the order refers to the particular contract involved;
- (ii) from Government agencies outside the Department of Defense; and
- (iii) from designated Agencies for the Blind and Other Severely Handicapped in accordance with 5–504.1(c).

(b) All delivery orders shall contain the typewritten name of the contracting officer or ordering officer and the original thereof shall be manually signed; when reproducible masters are used, only the masters need be manually signed; when interleaved carbon forms are used, manual signature on the original shall suffice. Facsimile signatures may be used in the production of delivery orders by automated methods.

(c) Duplication of the DD Form 1155r or DD Form 1155r–1 is not required when DD Form 1155 is used as a delivery order.

(d) Within the monetary limitations of 3–605.2, the DD Form 1155 may be used to order against a blanket purchase agreement.

(e) If the delivery order includes FMS requirements, clearly indicate "FMS Requirement" on its face and specify within the order each FMS case identifier code by line/subline item number. e.g., FMS Case Identifier GY-D-DCA.

3–608.7 *Use of DD Form 1155 as a Public Voucher.* DD Form 1155 is authorized for use as a public voucher:

- (i) not exceeding $10,000 when the form is used as a purchase order under 3–608.2(b)(1) above.
- (ii) without monetary limitation when the form is used as a delivery order, and
- (iii) without monetary limitation as the basis for payment of an invoice against blanket purchase agreements, or basic ordering agreements when a firm price has been established.

3–608.8 *Instructions for Entries on DD Form 1155 and Standard Form 36.*

(a) The instructions herein are mandatory for the preparation of orders if administration is assigned: (i) to DCAS, or (ii) to a non-DCAS office listed in the DoD Directory of Contract Administration Services components and the contractor is located in the continental United States or Canada.

(b) The organizational entity codes (address codes) referenced throughout 3–608.8 are as follows:

(i) *Codes published in DoD Activity Address Directory* (*DODAAD*), *DoD 4000.25D*. These codes will be used for Government entities in Blocks 6, 7, 9, 14,

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15, and 19. However, the "Ship To" (Block 14) and "Ship To" / "Mark For" (Block 19 (viii) and (xi)) shall use a DODAAD code for non-Government entities for shipments to satisfy MILSTRIP requisitions for that non-Government entity. Foreign Military Sales (FMS) and Military Assistance Program (MAP), "Ship To" / "Mark For" (Block 14) shall use a Military Assistance Program Address Directory (MAPAD) code (MAPAC and TAC) in accordance with DoD 5105.38-D.

(ii) *Codes published in Handbook of Non-Government Organizations for MILSCAP H8-1 / H8-2 Handbooks*. These codes will be used for non-Government entities in Blocks 9, 14, and 19, except for the condition as noted in (i) above.

(c) The right hand columns designate by alpha code the activities responsible for completing certain blocks on the form. The legend is "C" for contractor, "P" for purchasing office, and "—" for not applicable.

BLOCK #	TITLE & INSTRUCTIONS FOR ENTRIES	APPLICABLE TO: RFQ	APPLICABLE TO: PO	APPLICABLE TO: DO
1	*Contract/Purchase Order Number*—Enter the Procurement Instrument Identification (PII) number and, when applicable, the supplementary identification number for contracts and purchase orders as prescribed in ASPR Section XX, Part 2.	–	P	P
2	*Delivery Order Number*—Enter PII number for delivery orders as prescribed in ASPR Section XX, Part 2.	–	–	P
3	*Date of Order*—Enter the date of the order, *i.e.*, 2 position numeric year. 3 position alpha month and 2 position numeric day. For example: 71 Sep 30.	–	P	P
4	*Requisition/Purchase Request Number*—Enter the applicable number authorizing the purchase. When the number differs by line item it will be listed in the schedule and this block annotated "see schedule."	P	P	P
5	*Certified for National Defense Under DMS Reg 1*—Enter the appropriate claimant program number as defined in Volume I, Section III of the DoD Procurement Coding Manual.	–	P	P
6	*Issued by*—Insert the name and address of the issuing office. In the Code Block, insert the appropriate DODAAD code for the issuing office. Directly below the address insert: Buyer/Symbol, followed by the appropriate buyer's name and routing symbol. Directly below the Buyer/Symbol insert: Phone: followed by the buyer's phone number and extension.	P	P	P
7	*Administered by*—Enter the name and address of the DCAS or military activity responsible for administration service. The "DoD Directory of Contract Administration Services Components" No. 4105.59H contains the complete listing of activities performing contract administration services. On purchase orders retained by purchasing offices for administration this block may be marked "see block 6." Enter in the code block the organizational entity code (address code) of the administration services office. In the lower right or left-hand corner, insert Criticality Designator code (see 25-103).	–	P	P
8	*Delivery FOB*--Indicate the FOB point by checking the applicable box.	P	P	P

BLOCK #	*TITLE & INSTRUCTIONS FOR ENTRIES*	*APPLICABLE TO:*		
		RFQ	*PO*	*DO*
9	*Contractor/Quoter*—(i) Enter the full business name and address of the contractor or quoter. Enter in the first code block the organizational entity code (address code) of the contractor. (ii) If it is known that all the work covered by the order is to be performed at an address different than the address represented by the contractor's code, and any contract administration function will be required at that facility, enter in the facility code block the appropriate address code for that facility, *i.e.*, H8-1/H8-2 code for a nongovernment entity or DODAAD code for a government entity (DODAAD codes shall be used only to indicate "performed at" locations for orders specifying services at a government location.) If it is known that multiple facilities are involved, *i.e.*, when the work covered by the order is performed both at the contractor's address and one or more other facilities, or when all the work is to be performed at two or more facilities other than the contractor's address), indicate the codes for all facilities at which work is to be performed, including the contractor's code if work is performed at that address, in the Standard Form 36 Continuation Sheet and mark the facility code block with "See Schedule." For orders specifying services which will be performed at locations other than the contractor's address, the locations shall be indicated as required above.	P	P	P
10	*Delivery to FOB Point by*—If a single date of delivery is applicable to the entire order it shall be entered in this block. Multiples delivery dates will be listed in the schedule and this block annotated "See Schedule."	P	P	P
11	*Small Business*—Check if the contractor/quoter is a small business concern as defined in ASPR Section I, Part 7.	C	P	P
	Minority Business—Check if the contractor/quoter is a Minority Business Enterprise as defined in ASPR 7-2003.74.	C	P	P
12	*Discount Terms*—Enter the discount for prompt payment in terms of percentages and corresponding days allowed. The percentages will be expressed in whole numbers and decimals. For example:—3.25%—10 days; 0.50%—20 days.	C	P	–
13	*Mail Invoices to*—Enter a reference to the block number containing the appropriate address to which invoices are to be mailed. When not contained in blocks 6, 7, 14 or 15 insert in block 13 "See Schedule."	–	P	P
14	*Ship to*—If a single ship to point is applicable to the entire order the name and address of that point may be entered in this block. Multiple ship to points will be shown in the schedule and this block annotated "See Schedule."	P	P	P

BLOCK #	TITLE & INSTRUCTIONS FOR ENTRIES	APPLICABLE TO: RFQ	PO	DO
15	*Payment Will be Made by*—Enter the name and address of the activity making payment. For purchase orders assigned to DCAS see the "DoD Directory of Contract Administration Components No. 4105.59H for the DCAS Regional Office authorized to make payment. Enter in code block, the organizational entity code (address code) of the paying activity.	–	P	P
16	*Type of Order*—Indicate by checking the appropriate box whether order is a purchase or delivery order. If a purchase order, further entries are made as follows: (i) Identify the type of quotation, *i.e.*, oral, letter or TWX on which the order is based. (ii) When the Fast Payment procedure is applicable, indicate by checking the appropriate box. (iii) Check the box when acceptance of the purchase order by the Contractor is desired and indicate the number of copies of the order to be returned to the issuing office.	–	P	P
17	*Accounting and Appropriation Data*—Enter the accounting classification applicable to the order. Enter the Accounting Classification Reference Number(s) in accordance with 20/308.3.	–	P	P
18	*Item Number*—Enter an item number for each item of supply or service separately identified in accordance with Section XX, Part 3.	P	P	P
19	*Schedule of Supplies/Services*—The Schedule contains several elements of data. In order to accomplish standardization objectives, it will be necessary to treat and enter separately certain elements of data as indicated below. Though the order and arrangement of data in the schedule is only mandatory for purchase and delivery orders assigned to DCAS or Plant Cognizance Representatives for administration, it is encouraged, in order to establish uniformity, that this format be adopted for all orders.	P	P	P
	(i) *National Stock Number (NSN)*—Total Item Quantity for the line or subline item number followed by the appropriate National Stock Number or the word "none" if an NSN has not been assigned. On the same line and adjacent to NSN, enter the words "Total Item Quantity." This phrase is used in conjunction with the total quantity, unit of issue unit price, and dollar amount of the stock number or item cited (see entries for blocks 20, 21, 22, and 23).	P	P	P

BLOCK #	*TITLE & INSTRUCTIONS FOR ENTRIES*	*APPLICABLE TO:* *RFQ*	*PO*	*DO*
19 (Cont'd)	(ii) *Item Identification*—Enter first the most descriptive noun or verb of the supplies or services to be furnished, supplemented by additional description as prescribed in Section I, Part 12. If multiple accounting classifications apply to the contract, enter the Accounting Classification Reference Number in accordance with 20-308.3(c).	P	P	P
	(iii) *Quantity Variance*—Enter the quantity variance permitted for the line item in terms of percentages, indicating whether the percentage is plus or minus and if applicable to each destination.	P	P	P
	(iv) *Inspection/Acceptance*—Enter the point at which inspection/acceptance will take place.	P	P	P
	(v) *Preservation and Packaging*—Enter the preservation and packaging requirements for the item described. These requirements may be expressed in terms of MIL-STD-726 codes or reference to applicable specifications. 1st example: MIL STD 726 PRES/PACK: B/10/1/00/2/10/c/00/21/3/22/4/3/2/00. 2nd example: Preservation and packaging shall be in accordance with instructions below. DGSP P-54 in lieu of level "c" requirement.	P	P	P
	(vi) *Packing*—When required, enter the packing level designator and specification, standard, or document in which the requirements are stated, or state the specific requirements. 1st Example: Packing. Preserved and packaged items shall be packed Level (A, B, or C depending on destination) in accordance with MIL-STD-794; 2nd Example: Packing. Preserved and packaged items shall be packed level (A, B, or C) in accordance with DESC Manual 4100.1	P	P	P
	(vii) *Unitization*—When desired by the requiring activity, a requirement for cargo unitization for a particular destination should be specified for shipments involving two or more shipping containers having an aggregate total of not less than 20 cubic feet or 200 pounds. Example 1: Items packed for shipment shall be unitized in accordance with MIL-STD-147. Example 2: Nonperishable subsistence, packed as specified shall be unitized in accordance with MIL-L-35078C Type (I or II) Class (A through F for Type I, A through D for Type II. Supplemental waterproofing requirements of Appendix II (are/are not) applicable.	P	P	P

BLOCK #	TITLE & INSTRUCTIONS FOR ENTRIES	APPLICABLE TO: RFQ	PO	DO
19 (Cont'd)				
	(viii) *Ship to*—Enter the organizational entity code (address code) of the ship to point on the first line and the corresponding name and address on succeeding lines. If multiple accounting classifications apply to the same line or subline item, enter the Accounting Classification Reference Number in accordance with 20-308.3(c)(i). When several items are to be shipped to the same point, the code will be listed; but, it will not be necessary to repeat the clear text address.	P	P	P
	(ix) *Delivery Date*—When multiple delivery dates apply, enter the required date of delivery on the same line with Ship to Code.	P	P	P
	(x) *Mark For*—Enter the organizational entity code (address code) on the first line and name and address of the ultimate recipient of the supplies and services on succeeding lines.	P	P	P
20	*Quantity Ordered/Accepted*—Enter the total quantity ordered for the line item. If applicable, enter the breakdown on quantities for each ship to point within the line item.	P	P	P
21	*Unit*—Enter the unit of measure applicable to the line items described.	P	P	P
22	*Unit Price*—Enter the unit price applicable to the line item described.	-	P	P
23	*Amount*—Enter the extended dollar amount (quantity x unit price) for each line item.	-	P	P
24	*Contracting/Ordering Officer*—The contracting/ordering Officer's signature will be entered in this block.	-	P	P
25	*Total Amount*—Enter the total dollar amount for all line items on the order.	-	P	P
26 thru 42	These blocks are utilized in the receiving and payment functions. Procedures for making entries are prescribed by the respective departments.			

3-608.9 *Order-Invoice-Voucher Method.*

(a) Standard Form 44 (Purchase Order-Invoice-Voucher) is designed primarily for over-the-counter purchases by authorized individuals while away from the purchasing office or at isolated activities. It is a multipurpose form which can be used as a purchase order, receiving report, supplier's invoice and public voucher.

(b) Since there are no written terms and conditions included thereon, Standard Form 44 is authorized for use only when no other small purchase method is considered more suitable and all of the following conditions are satisfied:

(i) the transaction is not in excess of $2,500,
(ii) supplies or services are immediately available, and
(iii) one delivery and one payment will be made.

(c) Instructions for completion of Standard Form 44 contained on the form may be supplemented in accordance with Departmental needs to satisfy internal procedural requirements. Negotiation authority need not be cited. In view of the negotiable character of the Standard Form 44, installations will maintain adequate safeguards to assure proper usage and availability of funds.

3-608.10 *Purchase Orders Via Written Telecommunications Media.*

(a) A written telecommunicated purchase order is an order for supplies or services which is electrically transmitted to a supplier and which is not signed by the contracting officer.

(b) A written telecommunicated purchase order may be used only when all of the following conditions are present:

(i) its use is more advantageous to the Government than any other small purchase technique,
(ii) an unsigned transmitted order is acceptable to the supplier,
(iii) the order is approved by the contracting officer prior to its transmission,
(iv) the order does not require written acceptance by the supplier, and
(v) the purchasing office retains all contract administration functions.

(c) When a written telecommunicated purchase order is used:

(i) the General Provisions on DD Form 1155r shall be incorporated by reference in the transmitted order, as appropriate;
(ii) administrative information which is not needed by the supplier should not be transmitted but should be placed only on copies intended for internal distribution;
(iii) the same distribution shall be made of the transmitted order as is made of DD Form 1155; and
(iv) no DD Form 1155 or other small purchase form shall be issued.

(d) A written telecommunicated purchase order may be unpriced, *provided*, it meets the conditions set forth in 3-608.3.

3-609 Reserved.

PROCUREMENT BY NEGOTIATION

Part 7—Establishing Overhead Rates

3-700 Scope of Part. This Part sets forth the policy and procedure for establishing billing and final overhead rates for use in making interim reimbursements and final settlements under Department of Defense contracts.

3-701 Definitions.

3-701.1 *Final Overhead Rates.* The term final overhead rate, as used in this Part, means a percentage or dollar factor which expresses the ratio(s) mutually agreed upon by the Government and the contractor, at the close of the contractor's fiscal year, of indirect expense incurred in the period to direct labor, manufacturing cost, or other appropriate base of the same period.

3-701.2 *Overhead Billing Rates.* The term overhead billing rate, as used in this Part, means an overhead rate for interim reimbursement purposes which may be adjusted as necessary pending establishment of the final overhead rate.

3-701.3 *Overhead (Indirect Cost).* The term overhead (indirect costs), as used in this Part, is defined in 15-203 and 15-305.

3-701.4 *Postdetermined Overhead Rate.* The term postdetermined overhead rate, as used in this Part relative to contracts with educational institutions, refers to the establishment of the rate after the completion of the period to which the rate pertains.

3-701.5 *Predetermined Overhead Rate.* The term predetermined overhead rate as used in this Part refers to the situations involving educational institutions when final overhead rates are used to establish the amount of reimbursement for the indirect costs to be incurred during a future period of contract performance (*see 3-704.2(b)*).

3-702 Purpose.

3-702.1 *Final Overhead Rates.* The reason for establishing final overhead rates is to provide a method for determining the amount of reimbursement for indirect costs for a specific period.

3-702.2 *Overhead Billing Rates.* These rates provide a method for interim reimbursement of incurred indirect costs at estimated rates, subject to appropriate adjustment when final rates are established.

3-703 Applicability. Billing and final overhead rates will be used for all cost reimbursement type contracts; final overhead rates shall be considered in accordance with 15-106 for the final pricing of fixed-price incentive and fixed-price redeterminable type contracts as well as other contracts which require settlement of indirect costs prior to establishing final contract price. Overhead billing rates will be used in determining progress payment amounts.

3-704 Contract Clauses.

3-704.1 *Contracts With Contractors Other Than Educational Institutions.* Insert the appropriate "Allowable Costs" clause in cost type contracts with other than educational institutions:

(i) cost reimbursable supply — 7-203.4(a) or (b);
(ii) cost reimbursable research and development — 7-402.3;
(iii) cost reimbursable construction — 7-605.5;
(iv) consolidated facilities — 7-702.10;
(v) facilities acquisition — 7-703.9;
(vi) cost reimbursable services — 7-1909.4.

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3-704.2 *Contracts With Educational Institutions.*

(a) *Contracts With Educational Institutions — Postdetermined Rates.* Insert the appropriate "Allowable Costs" clause in contracts with educational institutions when postdetermined overhead rates are to be used pursuant to this Part:

(i) cost reimbursable supply — 7-203.4(a) or (b);

(ii) cost reimbursable research and development — 7-402.3.

(b) *Contracts With Educational Institutions — Predetermined Rates.* Provision may be made in cost reimbursement type research and development contracts with educational institutions for payment of reimbursable indirect costs on the basis of predetermined overhead rates, *provided* that this basis is used with respect to all contracts with an institution. Insert the appropriate "Allowable Costs" clause identified in 3-704.2(a), and the clause in 7-403.9, in contracts with educational institutions when such negotiated overhead rates are to be used pursuant to this Part. When predetermined overhead rates are to be used and no such rate(s) have been established for the contractor's current fiscal year, the contracting officer shall obtain from the contractor, a proposal for a predetermined overhead rate(s) to be applied until the end of such fiscal year. As far as practicable, such proposal should be based on the contractor's cost experience under similar contracts together with supporting data. The overhead rate(s) for such initial period shall be predetermined by negotiation and set forth in the contract schedule. The schedule shall also include the bases to which the rate(s) apply. Pending establishment of predetermined overhead rates for the initial period, the contractor shall be reimbursed at overhead billing rates acceptable to the contracting officer, subject to appropriate adjustment when the predetermined rates for that period are established.

3-705 Procedure.

(a) The clauses identified in 3-704.1 provide for the establishment of final overhead rates as part of the "Allowable Cost, Fee, and Payment" determination. Such rates will be established by either procurement or audit determination in accordance with the following criteria.

(1) Final overhead rates shall be established by procurement determination for all locations in a multi-divisional contractor complex for which a Corporate Administrative Contracting Officer (CACO) has been established, on a coordinated or centralized basis as jointly determined by the CACO and individual ACO's based upon the degree of centralization within the contractor complex and the requirements of the parties concerned. Where joint agreement cannot be reached, the matter will be referred to the Indirect Cost Monitoring Office (ICMO) for resolution. When negotiations are conducted on a coordinated basis, individual ACO's are responsible for coordinating with the CACO to assure consistency of cost determinations. In addition, those contractor locations not under an assigned CACO, but where a resident ACO (*see 20-903*) is assigned, and all educational institutions will follow the procedure of procurement determination of overhead rates. Exceptions to this basic policy may be made in special circumstances when the contract administration and audit services agree and one or more of the following circumstances apply:

A. the contractor location involves primarily fixed-price work with only minor cost type contracts, or

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B. the contractor location has a history of no known disputes and few cost problems which should result in a settlement which can be expected with little difficulty, or

C. the administrative cost of procurement determination is in excess of benefits to be gained therefrom, or

D. special circumstances dictate audit determination, and the procurement, contract administration, and audit services agree on a deviation.

(2) Final overhead rate settlements will be determined by the cognizant auditor at all locations not designated for procurement determination.

(b) *Established by Procurement Determination*. For those contractors meeting the criteria for procurement determination as set forth in (a)(1) above, responsibility for establishing final overhead rates will rest either with the CACO or the resident ACO. The procedure should consist of:

(i) submission by the contractor of an annual overhead rate proposal consisting of actual cost experience during the period, together with supporting data to the contracting officer and a copy to the cognizant audit activity;
(ii) submission of an advisory audit report to the contracting officer;
(iii) development of a negotiation position by the Government negotiating team;
(iv) conduct of negotiations;
(v) cost or pricing data certification;
(vi) preparation of a negotiation memorandum; and
(vii) preparation and execution by both parties of a written overhead rate agreement. The overhead rate agreement shall be executed for the Government by the contracting officer.

(1) The Government team will be headed by the contracting officer. Other team members should include the cognizant auditor and any technical/functional personnel as required. Those providing a significant input to the Government position will be invited to attend the negotiation. In addition, those DoD and other Government buying offices having significant dollar interest will be invited to participate in the negotiation.

(2) The cognizant audit activity shall submit an advisory report to the contracting officer. Such report shall:

(i) identify any advance agreements and special provisions governing specific contracts;
(ii) set forth the findings of the audit activity;
(iii) include results of discussion of such findings with the contractor; and
(iv) show the cost impact of any technical recommendations.

(3) When there is a significant difference of opinion between the Government and contractor concerning the allowability, allocability or reasonableness of indirect costs or the acceptability of the bases used in developing the overhead rates, representatives of the audit activity, technical activity and the contracting officer will discuss the areas of disagreement prior to the negotiation conference with the contractor. Special attention should be directed to those issues which impact prospective and subsequent final overhead rate determinations. Such issues should be resolved in order to preclude repetitive consideration of the same items.

(4) The negotiation conference will be conducted by the contracting officer or his authorized representative. The results of the negotiation will be binding on all procuring activities. In the event overhead rates other than the final overhead rates were utilized to effect a settlement or closure of a specific contract, that fact will not be considered a precedent when negotiating final overhead rates.

(5) At the completion of the negotiation, the contracting officer will prepare a written overhead negotiation memorandum (see the relevant parts of 3-811) and a written overhead rate agreement which will conform to paragraph (g) of the clause in 7-203.4, 7-402.3, 7-702.10 and 7-703.9. The overhead negotiation memorandum will include (i) a complete reconciliation of all costs questioned by the Government which identifies items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues, and (ii) a rationale for all aspects of the settlement in which the recommendations of the auditor or other Government advisors to the contracting officer were not followed.

(c) *Established by Audit Determination.* The procedure for the establishment of final overhead rates by audit determination should consist of: (i) submission by the contractor of an overhead rate proposal consisting of actual cost experience during the period, together with supporting data to the cognizant audit activity and to the cognizant ACO; (ii) audit and discussion of audit findings with the contractor; (iii) cost or pricing data certification; (iv) preparation of a written overhead rate agreement, which will conform to paragraph (g) of the clause in 7-203.4, 7-402.3, 7-605.5, 7-702.10 and 7-703.9, signed by the contractor and auditor-in-charge; and (v) preparation of an audit report detailing the audit findings, the cost impact of technical recommendations and results of discussion of such findings with the contractor. In the event agreement is not reached, the auditor will issue in addition to the advisory audit report, DCAA Form 1 detailing the items of exception to which the contractor can formally appeal to the cognizant ACO.

(d) *Distribution of Documents.*

(1) One executed copy of the overhead rate agreement will be furnished to the contractor, the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Departments may make further distribution to activities within their departments and shall insert one copy in each contractor general file (*see S2-10 .2 and S2-102.4*).

(2) One copy of the overhead negotiation memorandum prepared under procurement determination procedures or the audit report prepared under audit determination procedures will be furnished to the cognizant CACO (if assigned), the cognizant ACO, and the cognizant auditor. At those assigned negotiating units where total DoD sales in the year negotiated exceeded $100 million, a copy of the overhead negotiation memorandum will also

be furnished to the ICMO. Upon specific request, a copy will be furnished to other Departments or Government agencies.

3-706 Interagency Coordination for Educational Institutions. Each educational institution will be assigned to a single Government agency which will be responsible for negotiating final overhead rates. The procedures set forth in 3-705 will be followed in determining rates for those institutions assigned to the Department of Defense. The sponsoring Department will notify other interested Government agencies of each pending negotiation and invite these agencies to send representatives to participate in the negotiations. Departments having contracts with institutions assigned to nondefense agencies for negotiation of overhead rates will be invited to participate in such negotiations. When institutions are assigned to agencies other than the Department of Defense, the cognizant agency will prepare and distribute copies of executed overhead rate agreements to interested Departments.

3-707 Cost Sharing Rates. Cost sharing arrangements provide for cost participation by the contractor as evidenced by an agreement to contribute to direct cost and/or accept overhead rates which are lower than the anticipated actual overhead rates. In such cases, a negotiated fixed-ceiling overhead rate may be used for application prospectively, *provided that*, in the event final overhead rates established by procurement or audit determination are less than the negotiated rates, the negotiated rates will be reduced. When reductions are necessary, they will be accomplished in accordance with 3-705. The Government will not be obligated to pay any additional amounts on account of overhead above the negotiated fixed-ceiling rates (for cost sharing practices under research and development contracts, see 4-110).

3-708 Quick Closeout Procedure. When indirect costs allocated to a contract are relatively insignificant and agreement can be reached on a reasonable estimate of allocable dollars, a physically completed contract may be closed in advance of the final overhead rate determination. This determination shall be con-

sidered final for the affected contract closed prior to the final overhead settlement. No adjustment shall be made against, or the affect of any quick closeout allowed to impact, other contracts for any over or under recovery disclosed at the time of final overhead rate determination.

3-709 Lobbying Costs. The costs of lobbying for the procurement of specific supplies or services by the Federal Government are unallowable under 15-205.51, Lobbying Costs. Legislative liaison costs, as defined in the cost principle, are allowable costs. Where the contractor's accounting systems are not capable of differentiating unallowable lobbying costs from otherwise allowable costs, the contractor may be required to certify in writing that its overhead rate proposal does not include any unallowable lobbying costs. The certification shall be executed by the contractor, if an individual. When the contractor is not an individual, the certification shall be executed by a senior company official in charge at the contractor's plant or location involved, or by an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

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PROCUREMENT BY NEGOTIATION

Part 8—Price Negotiation Policies and Techniques

3-800 Scope of Part. This Part sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to consent by the Government. The principles in this Part apply to negotiation of prices on all types of contracts and to revised prices as well as initial prices.

3-801 Basic Policy.

3-801.1 *General.* It is the policy of the Department of Defense to procure supplies and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Good pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

3-801.2 *Responsibility of Contracting Officers.*

(a) Contracting officers, or their authorized representatives acting within the scope of their authority, are the exclusive agents of their respective Departments to enter into and administer contracts on behalf of the Government in accordance with ASPR and Departmental procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall avail himself of all appropriate organizational tools such as the advice of specialists in the fields of contracting, finance, law, contract audit, packaging, engineering, traffic management, and price analysis.

(b) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills. He shall not, however, transfer his own responsibilities to them. Thus, determination of the suitability of the contract price to the Government always remains the responsibility of the contracting officer. For certain acquisitions, it may be necessary to convene a formal "Should Cost" (see 1-337) team of specialists to evaluate the contractor's cost projections, supporting standards, and other in-plant management, operational, and performance practices, on which cost projections are based.

(c) When the contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable, the contracting officer shall (i) determine the feasibility of developing an alternate source of supply, or (ii) take any other action within his authority. If, after exhausting the above course of action, a satisfactory solution has not been obtained, the contracting officer shall refer the prospective procurement to higher authority. Such referral shall include a complete statement of the attempt made to resolve the matter. With regard to a contractor's refusal to provide cost or pricing data, see 3-807.5. |

(d) Pricing based on cost analysis involves, among other things, an appraisal of estimates of costs expected to be incurred in the future. The accounting projection of trends based on cost or pricing data, together with any known changes therein, is only one method of conducting this appraisal, others being:

(i) an engineering appraisal of the need for the estimated labor and material costs and of tooling and facilities, and the reasonableness of scrap and spoilage factors, and

(ii) the preparation of independent estimates by competent technical personnel.

Occasionally, differences of opinion will exist not only on the reasonableness of cost projections but also on the accounting techniques on which they are based. In addition, it is normally not possible to negotiate a pricing result which is in strict accord with all of the opinions of all of the specialists, or even with the Government's pricing objective. Reasonable compromises are normally necessary and this fact must be understood by all members of the team. For all of these reasons audit reports or pricing recommendations by others must be considered to be advisory only. The contracting officer is responsible for the exercise of the requisite judgments and is solely responsible for the final pricing decision. When the contracting officer does not adopt audit or other specialist recommendations that have particular significance on the contract price, comments should be included in the record of the negotiation.

(e) Whenever it becomes apparent to the contracting officer that the negotiations will require the resolution of complex problems which involve items significant in amount, he shall request attendance by audit or other representatives at the negotiation meeting.

(f) Contracting offices shall cover the disposition of each audit report as follows:

(i) For the audit report where the procurement action was finalized, the cognizant auditor shall be notified in accordance with the requirement of 3-811.

(ii) For those situations where the audit report is related to a cancelled or unsuccessful procurement action, the cognizant auditor shall be notified in writing.

3-801.3 *Responsibility of Requirements and Other Logistics Personnel in Purchasing Offices.* Personnel other than the contracting officer, who determine type, quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable and exert a material effect upon prices. Failure to determine requirements in sufficient time to allow:

(i) a reasonable period for preparation of requests for proposals;
(ii) preparation of quotations by offerors;
(iii) contract negotiation and preparation; or
(iv) adequate manufacturing lead time,

causes delays in deliveries and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase prices or restrict desired competition.

3-801.4 *Responsibility of Pricing Personnel in Purchasing Office.*

(a) The contract pricing team available to support the PCO in the review and analysis of pricing proposals includes the price analyst, negotiator, buyer, project engineer, and liaison auditor at the purchasing office.

(b) The price analyst or negotiator supporting the contracting officer may be designated to develop a Government pricing objective prior to the negotiation. This includes the responsibility for determining the extent of advice required from other specialists, requesting, obtaining, and considering such advice, and for consolidating pricing data, including cost and price analyses, historical cost or pricing data, independent government cost estimates, economic analyses and the like. The advice and assistance of the price analyst/negotiator should always be obtained when complex pricing techniques are indicated, including the use of contract types involving the skillful balancing of price, cost and performance incentive arrangements. In many instances, he will be in the best position to conduct the price negotiation.

3-801.5 *Responsibility of Field Pricing Support Personnel.*

(a) *Field Pricing Support.* Field pricing support involves analysis of the contractor's price proposal by any or all of the field technical and professional specialists including, but not limited to, the Plant Rep/ACO; contract auditor; price analyst; quality assurance personnel, engineers; and legal and small business specialists. The Plant Rep/ACO is the team manager for all PCO requests for field pricing support. Therefore the PCO shall send all requests for field pricing support to the cognizant field contract administration activity; generally, the Plant Representative (Plant Rep) for the Services and the Administrative Contracting Officer (ACO) for DCAS(DSA). However, there shall be no constraints on the lines of communication with the PCO/ACO and contract auditor interface.

(b) *Field Pricing Reports on Contract Price Proposals.*

(1) Prior to negotiation of a contract or modification resulting from a proposal in excess of $100,000 for firm fixed price and fixed price with provision for economic price adjustment, fixed price redeterminable (prospective), time and materials, or labor-hour type of contract, interim and final price redetermination and settlement of incentive types; $250,000 for fixed price incentive, cost plus incentive fee or fixed price redeterminable (retroactive) type of contract; or $500,000 for cost reimbursement, cost sharing, cost plus award fee, or cost plus a fixed fee type of contract, when the price is based on cost or pricing data (3-807.3) submitted by the contractor, the contracting officer (PCO or ACO) or authorized representative shall request a field pricing report (which usually includes an audit review by the contract audit activity), unless information available to the contracting officer is considered adequate to determine the reasonableness of the proposed cost or price. Whenever available data is considered adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination. Information of the type described in (i) through (vi) below, which is often available to the contracting officer from the Plant Rep/ACO or from the Procurement Liaison Auditor (PLA), should be useful in determining the extent of any field pricing support that is needed.

(i) In-house engineering determination of level of effort required in connection with research and development or study contracts.

(ii) Audited cost information from contract awards in process, or recently negotiated contracts.

(iii) Adequately reviewed data on proposed subcontracts items which constitute the major portion of the prime contract price proposal.

(iv) Prices of standard commercial items which constitute the major portion of the prime contract price proposal.

(v) Special forward pricing formulas or rates such as for support items, or forecast overhead rates, prescribed in an existing advance agreement.

(vi) Current labor rates, overhead rates, loading factors, per diem rates, and lot data based upon actual costs and labor hours.

It should be borne in mind that no single category of information is necessarily sufficient by itself; for example, information as to rates for labor and overhead would normally require data concerning the base elements—labor hours, material costs, etc.—to which the rates apply.

(2) Ordinarily, field pricing reports should not be requested for pre-award pricing actions below the threshold specified in 3-801.5(b)(1), except in instances such as a lack of knowledge of the particular contractor, sensitive conditions, or an inability to perform an acceptable degree of price or cost analysis, and thereby establish a reasonable pricing result. Before requesting field pricing support for lower dollar offers, the contracting officer should consider utilizing price or cost analysis techniques (3-807.2) or the information cited in paragraph (1)(i) through (vi) above to establish the reasonableness of the proposed price.

(3) The PCO shall forward the request to the Plant Rep/ACO (copy to the cognizant contract audit activity) clearly stipulating specific areas for which input is required and assigning a realistic deadline for receipt of the field pricing report. The request shall be accompanied by any information, including applicable portion of the RFP and the offeror's proposal, which would be useful in the evaluation of the proposal. In sole source procurements, when the contracting officer knows in advance that field pricing support will be required, he shall provide the cognizant Plant Rep/ACO and auditor a copy of the solicitation. In addition, he may require the contractor to provide copies of his proposal direct to the Plant Rep/ACO and auditor. In this event the PCO shall, as soon as possible after receipt of the contractor's proposal, identify those specific areas for which field pricing support is required.

(4) The Plant Rep/ACO, as well as the contract auditor, will be responsible for providing a complete and accurate field pricing report to the PCO. To accomplish this end the Plant Rep/ACO must:

(i) in concert with the auditor and in consideration of his workload, establish a deadline for the auditor's input, subject to date adjustments when considered necessary (adjustments will be coordinated by the Plant Rep/ACO with the PCO and the contract auditor);

(ii) identify areas for special consideration (these are areas in addition to those specified by the PCO);

(iii) arrange for exchanges of technical and audit information and coordination between the CAS and audit activities; and

(iv) be fully responsive to a request for technical information from the auditor.

(5) The contract auditor shall treat the copy of the PCO request as a signal to arrange for and begin the audit work. He must be fully responsive to the request of the Plant Rep/ACO and he must communicate to the Plant Rep/ACO any change in audit schedule which may be required. The scope and depth of the audit, subject to time constraints, is the responsibility of the contract auditor. In addition, specific requirements in the PCO request shall be accommodated. The dollar effect of technical input vital to the audit shall be computed by the contract auditor and included in his report. The auditor's completed report shall be sent to the Plant Rep/ACO for inclusion, without change, in the field pricing report to the PCO.

(6) When providing pricing support to the PCO, the Plant Rep/ACO has primary responsibility for consolidating and evaluating the findings of the pricing team members at the contract administration and contract audit offices and for the analysis of proposed prices in consideration of, but not limited to, such factors as the need for quantities and kinds of materials included in the proposal; the need for the number and kinds of man-hours; the need for special tooling and facilities; and the reasonableness of scrap and spoilage factors. These analyses by the Plant Rep/ACO and his team shall be based on their knowledge of such factors as production, quality assurance, engineering and manufacturing practices and techniques, and information as to plant capacity, scheduling, engineering and production "know-how," Government property, make or buy considerations, and industrial security, particularly as these relate to practices of the specific prospective contractor.

(7) The contract auditor is responsible for submission of information and advice, based on his analysis of the contractor's books and accounting records or other related data, as to the acceptability of the contractor's incurred and estimated costs. The auditor shall report any denial by the contractor of access to records or cost or pricing data which the auditor considers essential to the preparation of a satisfactory report. If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, this shall be stated in the audit report and concurrently made known to the contractor so that he may have the opportunity of presenting his views to the PCO and Plant Rep/ACO. When the PCO determines that deficiencies in the contractor's accounting system or estimating methods are such that the proposed contract cannot be adequately priced or administered, he shall, with the advice of the contract auditor and the Plant Rep/ACO, assure that necessary corrective action is initiated prior to the award of such contract. The auditor is responsible for performing that part of reviews and cost analyses which requires access to the contractor's books and financial records supporting proposed cost or pricing data, regardless of the dollar amount involved. Only the auditor shall have general access to the books and financial records for this purpose. This does not preclude the PCO, the Plant Rep/ACO, or their technical representative from requesting any data from, or reviewing records of, the contractor (such as lists of labor operations, process sheets, etc.) necessary to the discharge of their responsibilities.

(8) The efforts of all field pricing support team members are complementary, advisory and also offer an excellent check and balance of the various analyses imperative to the PCO's final pricing decision. Therefore it is essential that there be close understanding, cooperation and communication to ensure the exchange of information of mutual interest during the period of analysis. While they shall review the data concurrently when possible, each shall render his services within his own area of responsibility. For example, on quantitative factors (such as labor hours), the auditor may find it necessary to compare proposed hours with hours actually expended on the same or similar products in the past as reflected on the cost records of the contractor. From this information he can often project trend data. The technical specialist may also analyze the proposed hours on the basis of his knowledge of such things as shop practices, industrial engineering, time and motion factors, and the contractor's plant organization and capabilities. The interchange of this information will not only prevent duplication but will assure adequate and complementary analysis.

(9) During the course of the examination, the Plant Rep/ACO and the auditor shall each confer with the contractor to fully understand the basis for each item in the contractor's proposal and to remove any doubts as to the validity and accuracy of their conclusions and findings. Before such discussions are concluded, they should have explored and discussed with the contractor any discrepancies noted in their examinations involving cost or pricing data as defined under 3-807.3 (e) .

(10) The auditor, as part of his report, shall set forth the basis and method used by the contractor in preparing his proposal. Also, the report shall clearly identify the contractor's original proposal and all subsequent written formal submissions to the contracting officer or to the auditor by which cost or pricing data was furnished or identified by the contractor (see 3-807.3(d)). In addition, cost or pricing data not submitted by the contractor but otherwise coming to the auditor which have a significant effect on the proposed cost or price shall also be described in the advisory audit report. If the auditor considers that the cost or pricing data submitted by the contractor are not accurate, complete and current, or that cost representations are unsupported, this information will be made known in his audit report. When the resulting overall effect of those deficiencies on the proposed cost or price is of such magnitude that the usefulness of the contractor's proposal is considerably impaired as a basis for negotiation, the contracting officer should be advised promptly to enable corrective action to proceed without delay. The above is not intended to relieve the contractor of his obligation to submit accurate, complete and current cost or pricing data.

(11) Reports of technical analysis and review should be furnished to the auditor at the earliest possible date and at least five days prior to the due date of the audit report to enable the auditor to include the financial effect of technical findings in the audit report (for example, the necessary computations of dollar amounts arising from changes in proposed kinds and quantities of materials, labor hours, etc.). In the event the technical analyses are not available in time to be reflected in the audit report, the audit report shall so state, and this shall be made known to the Plant Rep/ACO so that comments may be incorporated in his submission to the PCO. If technical analyses are received later by the auditor, he shall issue a supplemental report if the status of the negotiation is such that a report would serve a useful purpose. The original of all technical reports received by the auditor shall be made a part of the audit report submitted to the Plant Rep/ACO.

(12) If in the opinion of the PCO, Plant Rep/ACO, or auditor, the review of a prime contractor's proposal requires further review of subcontractors' cost estimates at the subcontractors' plants (after due consideration of reviews performed by the prime contractor), such reviews should be fully coordinated with the Plant Rep/ACO having cognizance of the prime contractor before being initiated. If a review is required of a subcontract proposal, the prime Plant Rep/ACO shall forward the request to the subcontract ACO with an information copy to the subcontract auditor. In the event a lower tier subcontract proposal requires review, the request should be coordinated in sequence with the Plant Rep/ACO's at higher tiers in the subcontract chain. The resulting pricing reports, including any audit reports, shall be forwarded by the subcontract Plant

Rep/ACO to the prime Plant Rep/ACO with an information copy to the prime auditor. If the review is of a lower tier subcontract proposal, the report shall be transmitted through the Plant Rep's/ACO's in the subcontract chain.

(13) The audit report, giving the financial effect of related technical, subcontract, and other evaluations, shall be forwarded by the auditor to the Plant Rep/ACO. The Plant Rep/ACO (price analyst or negotiator) shall query the auditor or technical personnel about matters in audit or technical reports which appear to need clarification. When developing the Plant Rep/ACO statement to the PCO transmitting audit and technical reports, comments or observations shall be added about pertinent matters whether or not covered in the audit or technical reports. However, it is not contemplated, for example, that the price analyst or negotiator should attempt an examination of the contractor's accounting records for this purpose since the contract auditor has this responsibility. If any information disclosed subsequent to the audit report significantly affects the audit findings, the Plant Rep/ACO should promptly advise the auditor, who shall determine whether to issue a supplemental report.

(14) The Plant Rep/ACO shall transmit to the PCO by the date requested the field pricing report (including the original copy of the audit report). A copy of the Plant Rep/ACO's field pricing report (less the audit report and technical evaluation) shall be furnished to the contract auditor.

(15) The field pricing reports shall be made a part of the official contract file.

(16)Information generated through sources other than the contractor's records may be available to the contracting officer which may significantly affect the Government's negotiating position. The Plant Rep/ACO and the auditor, therefore, shall not disclose to the contractor their conclusions and recommendations to the contracting officer on the contractor's proposed costs or estimates to complete. No portion of the reports of the Plant Rep/ACO or the auditor shall be furnished to the contractor without the concurrence of the contracting officer responsible for the negotiations. The above limitations are not intended to preclude disclosure of discrepancies or mistakes of fact such as duplications, omissions, and errors in computations, contained in the contractor's cost or pricing data supporting the proposal.

3-802 Preparation for Negotiation.

3-802.1 *Product or Service.* Knowledge of the product or service, and its use, is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

3-802.2 *Selection of Prospective Sources.* Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be solicited from a sufficient number of competent potential sources to insure adequate competition. (See 1-302, 1-702, 1-902, 3-101, 3-104, 3-105, 4-106.1 and 12-102.) The bidders mailing lists prescribed by 3-503 should be used when appropriate.

3-803 Type of Contract.

(a) The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. Some of the factors for this joint consideration are listed in 3-401 and 3-402. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed-price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of a cost-reimbursement type or time and materials contract is to be avoided where experience has provided a basis for firmer pricing which will promote efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

(c) In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (i) the lowest proposed cost, (ii) the lowest proposed fee, or (iii) the lowest total estimated cost plus proposed fee. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and appropriate to the work to be performed (see 3-808). Beyond this, however, the primary consideration in determining to whom the award shall be made is: which offeror can perform the contract in a manner most advantageous to the Government.

3-804 Reserved.

3-805 Written and Oral Discussions.

3-805.1 *General.* Written or oral discussions shall be conducted with all responsible offerors who submit proposals within a competitive range, except that this requirement need not be applied to procurements:

(i) of $10,000 or less;
(ii) in which prices or rates are fixed by law or regulation;
(iii) in which date of delivery will not permit discussion;

(iv) of the set-aside portion of partial set-aside or by small business restricted advertising; or

(v) in which it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price, provided however that the solicitation notified all offerors of the possibility that award might be made without discussion, and provided that such award is in fact made without any written or oral discussion with any offeror.

3-805.2 *Competitive Range.*

(a) The determination as to which proposals are in a competitive range shall be made by the contracting officer. The competitive range shall be determined on the basis of price or cost, technical and other salient factors and shall include all proposals which have a reasonable chance of being selected for award. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it. The initial number of proposals considered as being within the competitive range may be reduced when, as a result of the written or oral discussions, any such proposal has been determined to no longer have a reasonable chance of being selected for award.

(b) No proposal from a responsible source offering an acceptable technical proposal shall be rejected for failure to fall within a competitive range unless such proposal includes a price proposal (except for procurement of architect-engineer services, see Section XVIII, Part 4). When unpriced technical proposals are solicited they shall be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable. After necessary discussion of such technical proposals is completed, prices shall be solicited for all acceptable proposals.

3-805.3 *Discussions With Offerors.*

(a) All offerors selected to participate in discussions shall be advised of deficiencies in their proposals and shall be offered a reasonable opportunity to correct or resolve the deficiencies and to submit such price or cost, technical or other revisions to their proposals that may result from the discussions. A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements.

(b) Discussions shall not disclose the strengths or weaknesses of competing offerors, or disclose any information from an offeror's proposal which would enable another offeror to improve his proposal as a result thereof.

(c) Auction techniques are strictly prohibited; an example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror. On the other hand, it is permissible to inform an offeror that his price is considered by the Government to be too high.

(d) At the conclusion of discussions, a final, common cut-off date which allows a reasonable opportunity for submission of written "best and final" offers shall be established and all remaining participants so notified. If oral notification is given, it shall be confirmed in writing. The notification shall include information to the effect that (i) discussions have been concluded, (ii) offerors are being given an opportunity to submit a "best and final" offer and (iii) if any such modification is submitted it must be received by the date and time specified, and is subject to the Late Proposals and Modifications of Proposals provision of the solicitation (but see 4-107).

3-805.4 *Changes in Government Requirements.*

(a) When, either before or after receipt of proposals, changes occur in the Government's requirements or a decision is made to relax, increase or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the solicitation. When time is of the essence, oral advice of changes may be given if (i) the changes involved are not complex in nature, (ii) a record is made of the oral advice given, (iii) all firms to be notified (see (b) below) are notified as near to the same time as feasible, preferably the same day, and (iv) the oral advice is promptly confirmed by the written amendment.

(b) The stage in the procurement cycle at which the changes occur and the magnitude of the changes shall govern which firms should be notified of the changes. If proposals are not yet due, the amendment should normally be sent to all firms solicited. If the time for receipt of proposals has passed but proposals have not yet been evaluated, the amendment should normally be sent only to the responding offerors. If the competitive range has been established, only those offerors within the competitive range should be sent the amendment. However, no matter what stage the procurement is in, if a change or modification is so substantial as to warrant complete revision of a solicitation, the original should be canceled and a new solicitation issued. In such cases, the new solicitation should be issued to all firms originally solicited, any firms added to the original mailing list and any other qualified firms.

(c) When a proposal considered to be most advantageous to the Government involves a departure from the stated requirements, all offerors shall be given an opportunity to submit new or amended proposals under (a) or (b) above on the basis of the revised requirements, provided this can be done without revealing to the other offerors the solution proposed in the original departure or any information which is entitled to protection under 3-507.1.

3-805.5 *Disclosure of Mistakes Before Award.*

(a) Contracting officers shall examine all proposals (or quotations) for minor informalities or irregularities and mistakes as defined in 2-405 and 2-406, respectively.

(b) Minor informalities or irregularities and apparent clerical mistakes shall be resolved substantially as prescribed in 2-405 and 2-406.2, respectively, and communications with offerors required to resolve such matters shall not be considered *discussions* within the meaning of this paragraph 3-805. However, if the resulting clarification prejudices the interest of other offerors, award may not be made without discussions with all offerors within the competitive range.

(c) Other mistakes in proposals shall be called to the offeror's attention as specifically as practicable without disclosing information of the type discussed in 3-507.2 and in 3-805.3(b) and (c). This is normally done, and the suspected mistake resolved, in the conduct of written or oral discussions.

(d) If it is contemplated that award will be made without discussions (see 3-805.1), then the following procedures shall be followed.

(1) If the contracting officer suspects a mistake, he shall advise the offeror and request verification. If the offeror verifies his proposal, award may be made. This procedure shall not be considered *discussions* within the meaning of this paragraph 3-805.

(2) If an offeror alleges a mistake in his proposal, the contracting officer shall advise him that he may withdraw his proposal or seek correction in accordance with (3) below.

(3) If an offeror requests permission to correct a mistake in his proposal, a determination permitting the correction may be made, provided both the existence of the mistake and the proposal actually intended are established by clear and convincing evidence ascertainable from the solicitation and the proposal, and such correction shall not be considered *discussions* within the meaning of this paragraph 3-805. If, however, establishing the mistake and the intended proposal requires reference to documents, worksheets, or other data outside the solicitation and the proposal, then the correction of such a mistake may be accomplished only through the conduct of discussions with offerors in accordance with this paragraph 3-805. If the above determination cannot be made, and the contracting officer still contemplates award without discussions, the offeror shall be given the opportunity to withdraw or to verify his proposal.

(e) Authority to make the determination required by (d)(3) above is delegated to the Head of a Procuring Activity with authority to redelegate to the Chief of the Purchasing Office. Each determination shall have the prior review of legal counsel.

3-806 Cost, Profit, and Price Relationships.

(a) When products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in 3-805.1. The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors.

(b) Profit or fee is only one element of price and normally represents a smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profit that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is concerned primarily with the reasonableness of the price which the Government ultimately pays, and only secondarily with the eventual cost and profit to the contractor.

3-807 Pricing Techniques.

3-807.1 *General.*

(a) *Policies.* Policies set forth in this Part may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. The following paragraphs describe the principal price and cost evaluation techniques and the circumstances under which each may be used. They are equally applicable to initial and subsequent price negotiations.

(b) *Adequate Price Competition and Catalog or Market Prices.* For the purpose of this paragraph, 3-807, the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be construed in accordance with the following general guidelines.

(1) *Adequate Price Competition.*

a. Price competition exists if offers are solicited and (i) at least two responsible offerors (ii) who can satisfy the purchaser's (*e.g.*, the Government's) requirements (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions (i) through (iv) is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

b. If conditions (i) through (iv) in *a* above are met, price competition may be presumed to be "adequate" unless the purchaser (*e.g.*, the contracting officer) finds that:

(i) the solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) the low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (*e.g.*, a determinative advantage because substantial costs, such as start-up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

3-807 Pricing of Negotiated Contracts.

3-807.1 *General.* Policies set forth in this Part may be applied in a variety of ways in evaluating proposals and negotiating contract prices. These provisions apply equally to initial and subsequent price negotiations.

(a) *Definitions.*

(1) *Cost or pricing data* consists of all facts existing up to the time of agreement on price which prudent buyers and sellers would reasonably expect to have a significant effect on price negotiations. Cost or pricing data embraces more than historical accounting data. It also includes such factors as all vendor quotations, nonrecurring costs, changes in production methods and production or procurement volume, data in support of contractor projections of business prospects and objectives, together with related costs of operations, unit cost trends such as those associated with labor efficiency, make-or-buy decisions and estimated resources to attain business goals and any other management decisions which reasonably could be expected to have a significant bearing on costs under a proposed contract, *e.g.*, the comparative analysis by which a particular vendor was selected. In short, cost or pricing data consist of all facts which reasonably can be expected to contribute to sound estimates of future costs as well as to the validity of costs already incurred. Cost or pricing data, being factual, are that type of information which can be verified.

(2) *Price analysis* is the process of examining and evaluating a prospective price without evaluation of the separate cost elements and profit proposed by the individual prospective supplier whose price is being evaluated.

(3) *Cost analysis* is the review and evaluation of a contractor's cost or pricing data and of the judgmental factors applied in projecting from the data to the estimated costs, in order to form an opinion on the degree to which the contractor's proposed costs represent what performance of the contract should cost, assuming reasonable economy and efficiency.

(4) *Indirect costs* are those costs commonly known as overhead. See 3-701.3 and 15-203 for more detailed treatment.

(5) *Forward Pricing Rate Agreements* (*FPRA's*) are written agreements negotiated between a contractor and the Government to make certain rates available for use during a specified period of time in pricing contracts or modifications. FPRA's represent reasonable projections of specific costs to be incurred in future periods that are not easily estimated for, identified to, or generated by a specific contract, contract end-item or task such as but not limited to labor rates, overhead rates, material obsolescence and usage, spare parts provisioning, and material handling.

(b) *Evaluation and Pricing of Individual Contracts.* Each contract shall be priced separately and independently and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition neither prevents the negotiation of indirect costs and other rates applicable to several contracts nor prohibits FPRA's applicable to several contracts.

(c) *Specified Contingencies.* When a contract is to include a provision for adjustment of price upon the happening of a specified contingency (*e.g.*, economic price adjustment clauses, Government-furnished property clauses, tax clauses), the contract price should not include any amount on account of such contingency.

(d) *Requirement for Price or Cost Analysis.* Some form of price or cost analysis is required in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation. Cost analysis shall be performed when cost or pricing data are required to be submitted. The extent of cost analysis should be that necessary to assure reasonableness of the pricing result, taking into consideration the amount and complexity of the proposed contract. Price analysis shall be used in all other instances to determine the reasonableness of the proposed contract price. Normally, a sound conclusion as to value cannot be made on the basis of cost analysis alone. Depending on the information available, a price arrived at by cost analysis should be corroborated through price analysis techniques.

3–807.2 *Price Analysis and Cost Analysis Techniques.*

(a) Price analysis may be accomplished in various ways including:

(1) the comparison of the price quotations submitted;

(2) the comparison of prior quotations and contract prices with current quotations for the same or similar end-items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as time of prior purchases, specifications, quantities ordered, time for delivery, Government-furnished materials and experienced trends of improvement in production efficiency; it must also be recognized that such comparison may not detect an unreasonable current quotation unless the reasonableness of the prior prices was established and unless changes in the general level of business and prices have been considered);

(3) the use of parametric relationship measurements or rough yardsticks (such as dollars per pound, per horsepower, or other units), to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;

(4) the comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities and similar indicia, together with discount or rebate arrangements; and

(5) the comparison of proposed prices with estimates of cost independently developed by the Government.

(b) (1) Cost Analysis includes the appropriate verification of cost or pricing data, the evaluation of specific elements of costs and the projection of these data to determine the effect on prices of such factors as:

(i) the necessity for certain costs,

(ii) the reasonableness of amounts estimated for the necessary costs,

(iii) allowances for contingencies,

(iv) the basis used for allocation of indirect costs; and

(v) the appropriateness of allocations of particular indirect costs to the proposed contract.

(2) Cost analysis also shall include appropriate verification that the contractor's cost submissions are in accordance with Section XV, Contract Cost Principles and Procedures, and when applicable Appendix O, Rules, Regulations and Standards of the Cost Accounting Standards Board.

(3) Among the evaluations that should be made, where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

(i) actual costs previously incurred by the contractor or offeror;
(ii) either his last prior cost estimate or a series of prior estimates for the same or similar items;
(iii) current cost estimates from other possible sources;
(iv) prior estimates or historical costs of other contractors manufacturing the same or similar items; and
(v) forecasts or planned expenditures.

(4) Forecasting future trends in costs from historical cost experience is of importance, but care must be taken to assure that the effect of past inefficient or uneconomical practices are not projected into the future. An adequate cost analysis must include an evaluation of trends and changes in circumstances, if any, and their effect on future costs.

3–807.3 *Requirement for Cost or Pricing Data.*

(a) When appropriate, the contracting officer shall require the contractor to submit, either actually or by specific identification in writing, cost or pricing data in support of his proposal. The contracting officer also shall require the contractor, in circumstances specified in (b) below, to certify, using the certificate set forth in 3–807.6, that the cost or pricing data submitted are accurate, complete, and current. Cost or pricing data shall not be required merely in anticipation of post-award review of the contract.

(b) Cost or pricing data are required as part of a proposal leading to, and certification is required prior to:

(i) the award of any negotiated contract (except for unpriced actions such as letter contracts) expected to exceed $100,000 in amount;
(ii) the pricing of any modification to any formally advertised or negotiated contract whether or not cost or pricing data were required in connection with the initial pricing of the contract when the modification involves aggregate increases and/or decreases in costs plus applicable profits expected to exceed $100,000. (For example, the requirement applies to a $30,000 modification resulting from a reduction of $70,000 and an increase of $40,000, or as another example, when the modification results in no change in contract price because there is an increase of $200,000 and a reduction of $200,000. However, this requirement shall not apply when unrelated and separately priced changes for which cost or pricing data would not be required are included in the same modification for administrative convenience.);
(iii) the award of any negotiated contract not expected to exceed $100,000 in amount, or any contract modification not expected to exceed $100,000 in amount to any contract whether or not cost or pricing data were required in connection with the initial pricing of the contract, provided the contracting officer considers that the circumstances warrant such action;

unless the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The requirements under (i) and (ii) above may be waived in exceptional cases when the Secretary (or, in the case of a contract with a foreign government or agency thereof, the Head of a Contracting Activity) authorizes such waiver and states in writing his reasons for such determination. A copy of each waiver shall be sent to the Director, Contracts and System Acquisition, Office of Under Secretary of Defense, Research and Engineering.

(c) Unless required to be submitted on one of the termination forms set forth in 16-700, data will be submitted on the DD Form 633. The requirement for submission of cost or pricing data is met when all cost or pricing data reasonably available to the contractor have been submitted or identified in writing at the time of agreement on price. The data shall be submitted to the contracting officer or his representative. There is a clear distinction to be made between "submitting" cost or pricing data and merely "making available" books, records and other documents without identification. The latter does not constitute submission of cost or pricing data.

(d) Certified cost or pricing data shall not be requested prior to the award of any contract anticipated to be for $25,000 or less and generally should not be requested for modifications in those amounts. There should be relatively few instances where certified cost or pricing data and the inclusion of defective pricing clauses would be justified in awards between $25,000 and $100,000. In most such awards, the administrative costs will outweigh the benefits which might otherwise accrue from receipt of certified cost or pricing data; hence all other means of determining reasonableness of price should be utilized. When less than complete cost analysis (*e.g.*, analysis of only specific factors) will provide a reasonable pricing result on awards under $100,000 without the submission of complete cost or pricing data, the contracting officer shall request only that data which he considers adequate to support the limited extent of the cost analysis required and he will not require certification.

(e) When it is anticipated from the outset that there will be adequate price competition, cost or pricing data shall not be requested regardless of the dollar amount involved. If, after cost or pricing data were initially requested and received, it is determined that adequate price competition does exist, the data need not be certified. As a general rule, cost or pricing data should not be requested when it has been determined that proposed prices are, or are based on, established catalog or market prices of commercial items sold in substantial quantities to the general public or are prices set by law or regulation. When, however, despite the existence of an established catalog or market price of commercial items sold in substantial quantities to the general public, the contracting officer finds that the price is not reasonable and supports such finding by an enumeration of the facts upon which it is based, cost or pricing data may be requested if necessary to establish a reasonable price; *provided*, that such finding is approved by the Chief of the Purchasing Office.

(f) When economic price adjustment provisions are included in competitive procurements, see 3-404.3(e).

3–807.4 *Subcontractor Cost or Pricing Data.*

(a) Any contractor who is required to submit and certify cost or pricing data shall be required to submit accurate, complete and current cost or pricing data from prospective subcontractors in support of each subcontract cost estimate included in the contractor's submission. This submission shall be required whenever the contracting officer considers such subcontractor data necessary for pricing the prime contract, or, in any event, whenever such subcontractor cost estimate is either (i) $1,000,000 or more, or (ii) both more than $100,000 and more than 10 percent of the prime contractor's proposed contract price. This submission is not required if the contractor demonstrates to the satisfaction of the contracting officer that a prospective subcontract will be based on adequate price competition, or that a prospective subcontract estimate is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, or a price set by law or regulation. Except for subcontracts within (i) or (ii) above, any such requirement for subcontractor cost or pricing data may be limited by the contracting officer to particular subcontract items or classes of items. However, in the case of subcontracts of $100,000 or less, any such requirement shall be subject to the limitations for contracts of $100,000 or less as set forth in 3–807.3(d). Submission of subcontractor cost or pricing data from more than one subcontractor for each subcontract item shall not ordinarily be required, provided that the contractor's subcontract cost estimate is based upon the cost or pricing data of the subcontractor who is most likely to get the subcontract. Notwithstanding the foregoing, the contractor shall submit other data pertaining to subcontract costs, including other subcontractor quotations.

(b) Prospective subcontractor cost or pricing data shall be accurate, complete and current as of the same date specified in the contractor's certificate. The contractor shall be responsible for updating a prospective subcontractor's data to the above date from the time of original submission by the subcontractor. Failure by the contractor to submit subcontract cost or pricing data may be cause for disqualification of the contractor from further consideration for award of the proposed contract. When the contractor has generally complied with such subcontract cost or pricing data requirements, his failure to do so for particular subcontracts in exceptional cases may be excused by the contracting officer. Such excuse, except when limited to an allowance of additional time, shall be approved by the Chief of the Purchasing Office. For each prospective subcontract so excused, the contracting officer shall either (i) allow additional time for submission of subcontract cost or pricing data up to the date of agreement upon the prime contract price; (ii) withdraw the requirement for subcontract cost or pricing data if he deems that cost or pricing data submitted by the contractor is adequate to support the subcontract estimate; (iii) reserve such subcontract item for future pricing; (iv) consider another contract type; or (v) make other arrangements to provide an adequate basis for agreement upon contract price. Also, for each subcontract so excused, the contractor shall remain obligated to obtain subcontractor cost or pricing data.

(c) These requirements, modified as appropriate to relate to a higher tier subcontractor rather than the prime contractor, shall apply to lower tier subcontracts under subcontracts for which subcontractor cost or pricing data are required.

(d) The contractor shall be required to support subcontract cost estimates below the minimum set forth in (a)(i) and (ii) above, by any data or information needed to establish a reasonable contract price.

(e) Any contractor who has been required to submit and certify cost or pricing data also shall be required to obtain cost or pricing data from his subcontractors under the circumstances set forth in the appropriate clause in 7-104.42, notwithstanding any prior submission from subcontractors. The requirements for submission of subcontractor cost or pricing data for subcontracts may be waived in exceptional cases when the Secretary (or his designee in cases when the subcontract is with a foreign government or agency thereof or is for less than $1 million) authorizes such waiver and states in writing his reasons for such determinations. A copy of each waiver shall be sent to the Assistant Deputy Under Secretary of Defense for Acquisition, Office of the Under Secretary of Defense, Research and Engineering.

(f) Cost or pricing data furnished by a subcontractor or a prospective subcontractor must be submitted to the prime contractor or higher-tier subcontractor. It is the responsibility of the prime contractor and higher-tier subcontractor to review and evaluate the subcontract proposal and supporting cost or pricing data and furnish the results of such review and evaluation to the Government as part of their cost or pricing data submission.

3-807.5 *Refusal to Provide Cost or Pricing Data.* If cost or pricing data from the contractor are required to permit adequate analysis of the contractor's proposal and the contractor has refused to provide such data, the contracting officer shall use those means available to him in attempting to secure such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment. In such event, he shall refer the procurement action to higher echelons of the Department. Such referral shall include a complete statement of the attempts made to resolve the matter, including (i) steps taken to secure essential cost or pricing data, (ii) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (iii) any assurances offered, such as agreements to adequately safeguard information furnished, and (iv) a statement concerning the practicability of obtaining the supplies or services from another source.

3-807.6 *Certificate of Current Cost or Pricing Data.*

(a) When a Certificate of Current Cost or Pricing Data is required, the certificate set forth below shall be included in the contract file along with the memorandum of the negotiation, see 3-811. The contractor shall be required to submit only one certificate which shall be submitted as soon as practicable after agreement is reached on the contract or modification price.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in ASPR 3-807.1(a)(1) submitted, either actually or by specific identification in writing (see ASPR 3-807.3(a)) to the Contracting Officer or his representative in support of . . . .* are accurate, complete, and current as of (day) (month) (year) . . . .**

This certification includes the cost or pricing data supporting any advance agreement(s) and forward pricing rate agreements between the offeror and the Government which are part of the proposal.

Firm ....
Name ....
Title ....
Date of Execution .... ***

(End of certificate)

* Describe the proposal, quotation, request for price adjustment or other submission involved, giving appropriate identifying number (*e.g.*, RFP No. . . . .)

** The effective date shall be the date when price negotiations were concluded and the contract price was agreed to. The responsibility of the contractor is not limited by the personal knowledge of the contractor's negotiator if the contractor had information reasonably available at the time of agreement, showing that the negotiated price is not based on accurate, complete and current data.

*** This date should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(b) Because the certificate pertains to "cost or pricing data," it does not make representations as to the accuracy of the contractor's judgment on the estimated portion of future costs or projections. It does, however, apply to the data upon which the contractor's judgment is based. This distinction between fact and judgment should be clearly understood.

(c) Whenever a Certificate of Current Cost or Pricing Data is required, the applicable clause in 7-104.29 shall be included in the contract.

(d) Although Cost or Pricing Data were requested in the solicitation, a Certificate of Current Cost or Pricing Data shall not be requested in connection with the award of any contract of any dollar value where the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(e) The exercise of an option at the price established in the initial negotiation in which certified cost or pricing data were used, does not require re-certification.

(f) Negotiated final pricing actions such as total final price agreements under fixed price incentive and redeterminable contracts, final overhead rate settlements under cost type contracts, or partial termination settlement agreements under any type of contract are contract modifications for which certified cost or pricing data are required. A certificate shall be submitted as soon as practicable after agreement is reached on the amount of the modification. That certificate is required when the amount of the total final price agreement exceeds $100,000 or partial termination settlement agreement plus the estimate to complete exceeds $100,000.

(g) A Certificate of Current Cost or Pricing Data is not a substitute for examination and analysis of the contractor's proposal.

(h) Data supplied during negotiation of an advance agreement and FPRA's (see 15-107 and 3-807.8) will not be certified at the time of agreement. When an advance agreement is used in partial support of a later contractual action which does require certification, the price proposal certificate will cover both the data originally supplied to support the advance agreement referenced on the DD Form 633 and all data required to update the specific price proposal data to the time of agreement on the contract price.

3-807.7 ***Adequate Price Competition, Catalog or Market Prices and Prices Set by Law or Regulation.*** For the purpose of paragraphs 3-807 and 15-205.22(e), the terms "adequate price competition", "established catalog or market prices of commercial items sold in substantial quantities to the general public", and "prices set by law or regulations" shall be construed in accordance with the following general guidelines.

(a) *Adequate Price Competition.*

(1) Price competition exists if offers are solicited and (i) at least two responsible offerors, (ii) who can satisfy the requirements, (iii) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price, (iv) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(2) If the foregoing conditions (i) through (iv) are met, price competition shall be presumed to be "adequate" unless it is determined that:

(i) the solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(ii) the low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (*e.g.*, a determinative advantage because substantial costs, such as start up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(iii) the lowest final price is not reasonable and this finding is supported by an enumeration of the facts upon which it is based; *provided*, that such finding is approved at a level above the contracting officer.

(3) A price is "based on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (*e.g.*, (i) exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable in accordance with 1-1505(d) and (ii) an item normally is procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition).

(4) Prices based on adequate price competition exempt offerors from the requirements for submission and certification of cost or pricing data. (*But see 3-1200 for CAS requirements.*)

(b) *Established Catalog or Market Prices of Commercial Items Sold in Substantial Quantities to the General Public.*

(1) In order for a given price to qualify as a catalog or market price for exemption from the requirements of Public Laws 87-653 or 91-379, the price must either be, or be based on, an established catalog or market price of commercial items, sold in substantial quantities, to the general public. Application of this exemption requires analysis on a case-by-case basis. In making the judgment that the exemption applies, the various elements of the criteria must be considered and a price must meet all these conditions.

(2) The following criteria should be applied to determine whether an item falls within the scope of this exemption:

a. "*Established Catalog Price.*" This is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

b. "*Established Market Price.*" This is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or vendor.

c. "*Commercial Item.*" This is an item, including both supplies and services, of a class or kind which is used regularly for other than Government purposes, and is sold or traded in the course of conducting normal business operations.

d. "*Sold in Substantial Quantities.*"

(i) Commercial items meet this criterion when the facts or circumstances support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the supplies or services. Nominal quantities, such as models, specimens, samples, and prototype or experimental units, cannot be considered as meeting this requirement. Services are sold in substantial quantities if they are customarily provided by the contractor, with personnel regularly employed, and with equipment, if any is necessary, regularly maintained, solely or principally for the purpose of providing such services. There must be a sufficient number of commercial buyers so that their purchases establish an ascertainable going price for the service.

(ii) DD Form 633-7, "*Claim for Exemption from Submission of Certified Cost or Pricing Data,*" establishes three categories of sales: Category A - sales to the U. S. Government or to contractors for U. S. Government use; Category B - sales to the general public at catalog prices; and, Category C - sales to the general public at other than catalog prices. Although substantial quantity cannot be defined precisely, sales to the general public normally are regarded as substantial if all the following criteria are met: Category B and C sales are not negligible in themselves and total 55% or more of the total Category A, B and C sales; and Category B sales total 75% or more of the total of Category B and C sales. If Category B and C sales total less than 35% of the total of Category A, B, and C sales, or Category B sales are less than 55% of the total of Category B and C sales, the contracting officer should rarely grant an exemption. When percentages fall between those stated above, the contracting officer should make an analysis before granting an exemption.

e. "*The General Public.*" An item meets this criterion when it is sold(i) to other than the Government (including FMS); (ii) to other than affiliates of the seller or (iii) for end use by other than the Government (including FMS).

(3) A price may be considered to be "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public if the item being purchased is sufficiently similar to such a commercial item to permit the difference between the prices of the items to be identified and justified without resort to cost analysis. In addition, cost or pricing data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two. Where an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the offered price of the former is not considered to be "based on" the price of the latter, any requirement for cost or pricing data should be limited to that pertaining to the differences between the items if this limitation is consistent with assuring reasonableness of the pricing result. In determining exemptions, it is the item under consideration that must meet the test. The ultimate objective is to achieve fair and reasonable prices for items bought. Altered terms, minor configuration changes, extra inspection requirements, or quantity differences are adequate reasons for pricing items differently from catalog or market prices.

(4) The Form DD 633-7, "*Claim for Exemption for Submission of Certified Cost or Pricing Data*", was designed to provide the information necessary to determine an item's exemption from the requirement to submit and certify cost or pricing data. (It also can be used to determine exemption from the requirements arising out of Public Law 91-379 relating to cost accounting standards.) However, the contracting officer may dispense with a DD Form 633-7 when:

a. Within the past year, the contractor or subcontractor has claimed exemption for the same or similar item and the Government has acted favorably on that claim. In this case, the contractor may reference or submit a copy of the prior submission and indicate the Government's action. Note 3 of DD Form 633-7 states the details of this alternative.

b. In anticipation of repetitive procurements of a catalog item, the PCO or the cognizant ACO has made special arrangements for submission of the exemption claim. The submission need not be on a DD Form 633-7, but shall include any data required by the form and include or incorporate by reference all the applicable definitions, representations and rights included in the form. Government approval of the exemption claim shall set forth the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the continuation of the exemption. Such approval may be extended to other Government purchasing offices with their concurrence.

c. Before initiating a procurement, the contracting officer is satisfied, on the basis of a recent prior submission by a prospective contractor or because of his knowledge of the time, sources, prevailing prices, market conditions, or otherwise, that the item has an acceptable established catalog or market price or price set by law or regulation. In this case the contracting officer may, by a solicitation provision or otherwise, either dispense with the requirement for a DD Form 633-7 or limit the data required to be submitted by the form. For example, if the item being procured is similar to a standard commercial product, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity, of sales may be required.

(5) In exceptional cases the relevant data may justify a catalog or market price exemption even though the prescribed criteria are not strictly satisfied in all respects. In such cases, if the contracting officer is satisfied, on the basis of a DD Form 633-7 or other submission, that an exemption should be made or considered, he may forward the matter to the Chief of the Purchasing Office who may authorize an exemption on an individual or class basis. The quantity and prices of actual non-government sales in relation to the sales and prices offered to the Government, as these relationships may be influenced by prevailing trade practices, are the important factors to be considered. The Government's need and the offeror's resistance are not appropriate considerations.

(6) Even though an item qualifies for exemption from the requirements for submission of certified cost or pricing data, price analysis must be performed to determine the reasonableness of the price and the need for further negotiation. This analysis will often require more information than is contained in the DD Form 633-7. Unless the additional information required is available from Government sources, it may be necessary to obtain it from the prospective supplier. The specific information will vary with the procurement involved but may include:

(i) the supplier's marketing system, that is, use of jobbers, brokers, sales agencies, distributors, etc.;
(ii) the services normally provided commercial purchasers (*e.g.*, engineering, financing, advertising or promotion);
(iii) normal quantity per order; and
(iv) annual volume of sales to largest customers.

(7) The contracting officer may verify or obtain verification (including assistance by audit or contract administration personnel) if he deems it necessary to satisfy himself of the reliability of the data in the light of his general knowledge of the product, the market and prior Government purchases. The access to the offeror's books and records granted by the DD Form 633-7, or necessary with other submissions, is limited to actual sales and other data directly pertinent to the factual basis for the exemption claimed. It does not extend to cost, profit or other data solely relevant to the reasonableness of the catalog or proposed price. When exemption is based on an established catalog or market price, the contracting officer shall assure that all applicable criteria are satisfied.

(8) Subcontractors' submissions supporting claims for exemption shall be made through intermediate subcontractors, if any, to the prime contractor who may submit them at any time to the contracting officer for an advance review of the acceptability of an exemption claim but otherwise the prime contractor shall submit them with his proposal or request for subcontract consent; or other action by the contracting officer, whichever comes first.

(c) *Prices Set by Law or Regulation.*

(1) A price set by law or regulation also is exempt from the requirements of Public Law 87-653 (and Public Law 91-379). Some governmental body must be responsible for determining the price or range of prices that the offeror will charge customers, including other governmental agencies. Pronouncements in the form of periodic orders, reviews or similar actions of a public body, or embodied in the laws are sufficient to establish the price to be paid.

(2) DD Form 633-7 will be used to justify this exemption. However, the PCO may elect to dispense with all or part of the submission under the same conditions and with the same restrictions set forth in connection with catalog or market prices.

(3) Subcontractor claims for this exemption will be processed in the same manner as exemptions claimed for catalog or market prices.

3-807.8 *Forward Pricing Rate Agreements (FPRA's).*

(a) FPRA's shall be negotiated by the cognizant ACO on his own initiative, on the request of the PCO, or on request of the contractor. In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the existence of the agreement are commensurate with the effort necessary to establish and monitor it. Normally, these agreements are warranted at contractor locations where a significant volume of proposals is processed. The contract auditor and procurement representatives having a significant interest shall be invited to participate in the negotiation to aid in the establishment of sound projections of anticipated business, the determination of reasonable levels of indirect costs, and mutual understanding of the results of the negotiation. Such coordination will assist in the negotiation of major procurements, thereby optimizing the use of resources and maximizing the applicability of the rates to forward pricing actions. The Department or Agency having plant cognizance shall make the determination as to when FPRA's will be established.

(b) FPRA rates will be used for PCO/ACO forward pricing actions during the period of the agreement, subject to the ACO's final determination with respect to the significance of reported changed conditions which may affect the use of those rates.

(1) Changed conditions may be reported by the PCO, contract administration personnel, the contract auditor, or the contractor. In assessing changed conditions, the ACO will consider: (i) the type of contract contemplated; (ii) whether the dollar amount of the proposed contract action would significantly change the rates in the agreement; (iii) whether the performance period of the proposed contract action is significantly different from the period to which the rate agreement applies; and (iv) any new data or other information that may raise a question as to the acceptability of the rates.

(2) When the ACO determines that FPRA rates are still valid, he will so advise the interested party who reported the altered conditions.

(3) When the ACO determines that the changed conditions negate the FPRA rates, he shall immediately (i) notify procurement representatives having a significant interest (for example, a PCO negotiating a contract), and (ii) initiate appropriate action to enter into negotiation for revised FPRA's.

(4) When procurement representatives have received notice that changed conditions negate FPRA's, individual procurement actions should not be delayed. Pending negotiation of revised FPRA's, the changed conditions should be reflected in the individual procurement actions.

(c) Prior to entering into a forward pricing rate agreement, the administrative contracting officer will obtain a proposal from the contractor which contains cost or pricing data which are accurate, complete and current as of the date of submission. A certificate (3-807.6) is not required at this time. The administrative contracting officer will conduct a review and analysis utilizing the services of the contract auditor and, to the extent necessary, technical personnel. Buying activities having a significant interest shall be afforded the opportunity to assist in the development of a unified Government objective. Upon completion of negotiation, a memorandum of negotiation will be prepared (see 3-811). Copies of this memorandum of negotiation will be distributed to all procurement offices that provided support and the cognizant DCAA audit office as soon as practicable.

(d) The forward pricing rate agreement shall provide specific terms and conditions covering expiration, application and data requirements for systematic monitoring of the agreement to assure the validity of the rates. The agreement shall provide for cancellation at the option of either party, and shall require the contractor to submit to the administrative contracting officer and to the cognizant contract auditor any significant change in cost or pricing data.

(e) The DD Form 633 requires offerors to describe, in their procurement proposals, any forward pricing rate agreement. When the FPRA is used, offerors are required to identify the latest cost or pricing data already submitted in accordance with the rate agreement. All data submitted in connection with the FPRA, updated as necessary, form a part of the total data that the contractor certifies to be accurate, complete and current at the time of agreement on price of a contract or contract modification.

(f) Indirect costs commonly known as overhead are defined and described in 15-203. Criteria for treatment and application of indirect costs to contracts are also set forth in 15-203. To assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited overhead data or negotiated overhead rates, when available, in connection with negotiation of contracts and shall not, unless authorized by the head of a procuring activity, seek preferential overhead rates. If there is any question with respect to audited overhead data or negotiated overhead rates, or if such are not available, the negotiator should normally avail himself of the advisory services of the cognizant Department of Defense auditor in consonance with 3-809.

3-807.9 *Subcontract Pricing Considerations.*

(a) *General.*

(1) Subcontract costs and pricing arrangements are significant elements to be considered during negotiation of prime contracts and during contract administration.

(2) Basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, for subcontract prices, and for subcontract performance. The contracting officer who is responsible for negotiating the contract price with the prime contractor must have adequate knowledge of these elements as they affect prime contract prices.

(b) *Subcontracting Considerations*. Contractors' "make-or-buy" programs and proposed subcontracts must be reviewed in accordance with Part 9 of this Section and with Section XXIII. Information from these reviews should be used in evaluating subcontract costs when negotiating prime contract prices. The contracting officer, when appropriate, should secure from the contractor information concerning:

(i) the prime contractor's purchasing practices; and

(ii) the principal components to be subcontracted and the prospective or actual subcontractors, including (A) the extent of competition obtained or to be obtained, (B) the basis for the subcontract costs included in the contract pricing proposal (DD Form 633), (C) any contractor cost or price analyses of subcontract proposals, including the cost or pricing data submitted by subcontractors, (D) the pricing arrangement contemplated or negotiated, and (E) the extent of subcontract supervision.

(c) *Review of Subcontract Costs in a Prime Contractor Proposal.*

(1) The PCO is responsible for the reasonableness of the prime contract price which includes satisfying himself as to the reasonableness of the subcontract costs included in the prime contract price. Field pricing support from the Plant Rep/ACO cognizant of the prime contractor is generally required in determining reasonableness of the prime contract price. In some instances, it may be necessary to obtain field pricing support of proposed subcontracts. On the basis of a request from the PCO and/or advice from members of the field pricing team, the ACO cognizant of the prime contractor may request field pricing support form the ACO cognizant of the prospective subcontractor. These actions will be taken in accordance with 3-801.5.

(2) If the prime contractor's analysis is not considered adequate, the ACO will return the analysis package to the contractor for re-accomplishment indicating areas of inadequacy. In this case, the prime contractor will accomplish or cause the accomplishment of the additional review and resubmit the package to the ACO.

(3) If the PCO/ACO believes that a subcontract at any tier requires field pricing support by the Government, notwithstanding availability of data or analysis done by the prime contractor, he may request such action. This request may be made along with the initial request for field pricing support of the prime or subsequently. This generally will be done only when:

(i) there is a business relationship between the prime contractor and subcontractor not conducive to independence and objectivity, as in the case of a parent-subsidiary or when prime and subcontracting roles of the companies are frequently reversed; or

(ii) the contractor is sole source and the subcontract costs represent a substantial part of the prime contractor costs; or

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(iii) the prime contractor was denied access to the subcontractor's records; or

(iv) the PCO determines that, because of factors such as the magnitude of the proposed subcontract price, a subcontract or subcontracts at any tier are critical to a fully detailed analysis of the prime contract proposal. The purpose is to satisfy the PCO, notwithstanding the prime contractor analysis, that these elements of the total proposed price are reasonable.

(4) In those instances when PCO/ACO requests the cognizant ACO to review subcontractor's cost estimates, the request shall be accompanied by a copy of the review package accomplished by the prime contractor or higher-tier subcontractor, including: (i) the subcontractor's proposal; (ii) DD Form 633; (iii) other related cost and pricing data provided by the subcontractor; and (iv) when available, the results of the prime contractor's or higher-tier subcontractor's cost/price analysis.

(5) The appropriate contract administration activities will be notified by the HCA when review and evaluation of subcontractors' proposals: (i) will require extensive field pricing assistance in connection with the acquisition of a major new weapon system, or (ii) require special or expedited action by field pricing personnel and such action is being, or has been, delayed.

(d) *Review of Subcontract After Award of the Prime Contract.*

(1) In the review of subcontracting there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies. Contractors shall be required to undertake price analysis in all significant subcontract transactions, and to undertake cost analysis when certified subcontract cost or pricing data are required. Where the contracting officer's consent to subcontract is required in accordance with 23-200, price or cost analysis shall be required as a condition of such consent and the policies and procedures set forth in 3-807.9(c)(1), (2), and (3) shall be used to evaluate the subcontract price.

(2) When the Government performs the analysis of the subcontract proposal in lieu of the prime contractor because access to the subcontract records was denied to the prime contractor or higher-tier subcontractor, the Government will furnish, to the prime contractor or higher-tier subcontractor, with the consent of the subcontractor reviewed, the summary of the analysis performed by the Government in arriving at a determination of the unacceptable costs included by element in the subcontract proposal. Absent such consent, a range of unacceptable costs for each element will be furnished.

(3) When subcontracts have been placed on a price redetermination or fixed-price incentive basis and the prime contract is to be repriced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced the amount included for subcontracting is reasonable, *e.g.*, where realistic cost or pricing data on subcontract efforts are available. However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices

that are lower than those predicted in redetermining the prime contract price, other circumstances may require the prompt negotiation of the final contract price. In such a case, the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

> "Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract.
>
> List Subcontracts"

(4) In considering cost-plus-fee subcontracts the contracting officer shall make every effort to insure that fees under such subcontracts never exceed the fee limitations identified in 3–405.6(c)(2).

3–807.10 *Defective Cost or Pricing Data.*

(a) When any price to the Government must be negotiated largely on the basis of cost or pricing data submitted by the contractor, the data must be accurate, complete and current and in appropriate cases so certified by the contractor or subcontractor. If such certified cost or pricing data are subsequently found to have been inaccurate, incomplete or noncurrent as of the effective date of the certificate, the Government is entitled to an adjustment of the negotiated price, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The clauses in 7–104.29 give the Government an enforceable contract right to a price adjustment, that is, to a reduction in the price to what it would have been if the contractor had submitted accurate, complete and current data. They also give the Government a right to a price adjustment for defects in cost or pricing data submitted by a prospective or actual subcontractor. In arriving at a price adjustment under a clause, the contracting officer should, after review of the record of the contract negotiation, consider the following:

(1) *The time when cost or pricing data was reasonably available to the contractor.* Certain data such as overhead expenses and production records may not be reasonably available except on normal periodic closing dates. Also, the data on numerous minor material items each of which by itself would be insignificant may be reasonably available only as of a cut-off date prior to agreement on price because the volume of transactions would make the use of any later data impracticable. Furthermore, except where a single item is used in substantial quantity, the net effect of any changes to the prices of such minor items would likely be insignificant. Closing or cut-off dates should be included as a part of the data submitted with the contractor's proposal and should be updated by the contractor to

the latest closing or cut-off dates, preceding agreement on price, for which such data are available. The contracting officer and contractor are encouraged to reach a prior understanding on criteria for establishing closing or cut-off dates, and to the extent possible, the understanding should relate to the contractor's formal estimating system. Notwithstanding the foregoing, significant matters are important to contractor management and to the Government and any related data within the contractor's organization or the organization of a subcontractor or prospective subcontractor would be expected to be current on the date of agreement on price and, therefore, will be treated as reasonably available as of that date. Although changes in the labor base or in prices of major material items are generally significant matters, no hard and fast rule can be laid down since what is significant can depend upon such circumstances as the size and nature of the procurement.

(2) In the absence of evidence to the contrary, the natural and probable consequence of defective data is an increase in the contract price in the amount of the defect plus related burden and profit or fee; therefore, unless there is a clear indication that the defective data were not used, or were not relied upon, the contract price should be reduced in that amount. In establishing that the defective data caused an increase in the contract price, the contracting officer is not expected to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(3) In determining the amount of an adjustment, the contracting officer shall consider any understated cost or pricing data submitted in support of price negotiations for the same pricing action (*e.g.*, for the initial pricing of the same contract or for pricing the same change order), up to the amount of the Government's claim for overstated cost or pricing data arising out of the same pricing action. Such offsets, however, need not be in the same cost groupings (*e.g.*, material, labor or overhead).

(b) If at any time prior to agreement on price, the contracting officer learns through audit or otherwise that any cost or pricing data submitted are inaccurate, incomplete, or noncurrent, he shall immediately call it to the attention of the contractor whether that defective data tends to increase or decrease the contract price. Thereafter, the contracting officer shall negotiate on the basis of any new data submitted, or on a basis which makes satisfactory allowance for the incorrect data, and shall reflect these facts in his record of negotiation.

(c) After award, if the contracting officer obtains information which leads him to believe that the data furnished may not have been accurate, complete, or current, or if he considers that the data may not have been adequately verified as of the time of negotiation, he should request an audit to evaluate the accuracy, completeness, and currency of such data. In the case of negotiated firm fixed-price contracts, post-award cost performance audits, pursuant to a clause in 7-104.41, shall be limited to the single purpose of determining whether or not defective cost or pricing data were submitted. Such audits shall not be for the purpose of evaluating profit-cost relationships, nor shall any repricing of such contracts be made because the realized profit was greater than was forecast, or because some contingency cited by the contractor in his submission failed to materialize—unless the audit reveals that the cost or pricing data certified by the contractor were, in fact, defective.

(d) Under the "Price Reduction for Defective Cost or Pricing Data" clauses in 7-104.29, the Government's right to reduce the prime contract price extends to cases when the prime contract price was increased significantly because a subcontractor furnished defective cost or pricing data. In exercising the Government's rights in such cases, the contracting officer will consider the varying circumstances discussed below.

(1) In some instances, the prime contractor may have reached agreement on price with a subcontractor before the prime contractor and the Government agree on a definitive price. This might occur, for example, if the prime contractor commenced performance under an unpriced action such as a letter contract. In such cases the subcontractor's cost or pricing data must be submitted with the prime contractor's submission. If any such subcontractor data are subsequently found to be defective, the prime contract is subject to price adjustment in the same manner as would be the case if any other cost or pricing data submitted by the prime contractor proved to be defective.

(2) The Government and the prime contractor will normally agree on the price of a contract prior to final agreement on price between the prime contractor and his subcontractor. In such cases, the prime contract price will be based, in part, on subcontract cost estimates. The prime contractor will be expected to support his subcontract cost estimates with subcontractor cost or pricing data. The prime contract price will be subject to adjustment on the basis of defective subcontractor cost or pricing data submitted prior to agreement on the prime contract price if:

(i) such subcontractor data were not accurate, complete, or current as of the date certified in the prime contractor's Certificate of Cost or Pricing Data, or in some cases were not accurate as submitted by the subcontractor, and

(ii) the prime contract price was increased by a significant sum because of such defective subcontractor data.

Any adjustment in prime contract price due to defective subcontract data of a prospective subcontractor, where the subcontract was not subsequently awarded to the prospective subcontractor, will be limited to the amount (plus applicable overhead and profit markups) by which the actual subcontract price or the actual cost to the contractor if not subcontracted, was less than the original subcontract cost estimate, *provided* the actual subcontract price was not affected by defective data.

(3) Under cost reimbursement type and under all fixed-price type contracts, except firm fixed-price and fixed-price with economic price adjustment provisions, increases in payments to subcontractors due to defective subcontractor cost or pricing data will be the basis for disallowance or nonrecognition of costs under the defective cost or pricing data clauses, because the Government has a continuing and direct financial interest in such payments which is unaffected by the initial agreement on prime contract price. Although the action is taken under those price reduction clauses rather than under Section XV, as a practical matter the result is the same, *i.e.*, the increased costs will be disallowed

under cost-type contracts or not considered as actual costs for final pricing of redeterminable or incentive-type contracts. The action is taken under the price reduction clauses because not only will the increased costs be disallowed or not considered as actual costs but also the fixed-fee or target profit included in the initial price may be subject to reduction in accordance with (1) and (2) above.

(e) In some cases, as where the defective nature of subcontractor data is only disclosed by Government audit, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer shall make such information available, upon request, to the prime contractor or appropriate subcontractors. However, if the release of such information would compromise military security or disclose trade secrets or other confidential business information, it shall be made available only under conditions that will fully protect it from improper disclosure, as may be prescribed by: the Office of the Assistant Secretary of the Army (Research, Development and Acquisition), for the Army; Chief of Naval Material (ADCNM for Contracts and Business Management) for the Navy; the Director of Contracting and Acquisition Policy, Headquarters, USAF(AF/RDC) for the Air Force; and the Executive Director, Contracting, for the Defense Logistics Agency. Information made available pursuant to this paragraph shall be limited to that used as the basis for the prime contract price reduction.

(f) Inasmuch as price reductions under the Price Reduction for Defective Cost or Pricing Data clauses may involve subcontractors as well as the prime contractor, the contracting officer shall give the prime contractor reasonable advance notice before making a determination to reduce the contract price under such clauses, in order to afford the prime contractor an opportunity to take any action deemed advisable by him, particularly in connection with any subcontracts that may be involved.

3-808 Profit, Including Fees Under Cost-Reimbursement-Type Contracts.

3-808.1 *Policy.*

(a) *General.* It is the policy of the Department of Defense to utilize profit to stimulate efficient contract performance. Profit generally is the basic motive of business enterprise. The Government and defense contractors should be concerned with harnessing this motive to work for more effective and economical contract performance. Negotiation of very low profits, the use of historical averages, or the automatic application of a predetermined percentage to the total estimated cost of a product, does not provide the motivation to accomplish such performance. Furthermore, low average profit rates on defense contracts overall are detrimental to the public interest. Effective national defense in a free enterprise economy requires that the best industrial capabilities be attracted to defense contracts. These capabilities will be driven away from the defense market if defense contracts are characterized by low profit opportunities. Consequently, negotiations aimed merely at reducing prices by reducing profits, with no realization of the function of profit, cannot be condoned. For each contract in which profit is negotiated as a separate element of the contract price, the aim of negotiation should be to employ the profit motive so as to impel

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effective contract performance by which overall costs are economically controlled. To this end, the profit objective must be fitted to the circumstances of the particular acquisition, giving due weight to each of the effort, risk, facilities investment, and special factors set forth in this 3-808. This will result in a wider range of profits which, in many cases, will be significantly higher than previous norms.

(b) *Contracts Priced on the Basis of Cost Analysis.* When cost analysis is performed pursuant to 3-807.2, profit consideration shall be in accordance with the objectives set forth below. The Government should establish a profit objective for contract negotiations, which will—

(i) motivate contractors to undertake more difficult work requiring higher skills and reward those who do so;
(ii) allow the contractors an opportunity to earn profits commensurate with the extent of the cost risk they are willing to assume;
(iii) motivate contractors to provide their own facilities and financing and to establish their competence through development work undertaken at their own risk and reward those who do so; and
(iv) reward contractors for productivity increases.

The weighted guidelines method set forth in 3-808.2 for establishing profit objectives is designed to provide reasonably precise guidance in applying these principles. This method, properly applied, will tailor profits to the circumstances of each contract in such a way that long-range cost-reduction objectives will be fostered, and a spread of profits will be achieved that is commensurate with varying circumstances.

(c) *Contracts Priced Without Cost Analysis.* On many contracts and subcontracts, good pricing does not require an examination into costs and profits. Where adequate price competition exists, and in other situations where cost analysis is not required (see 3-807), fixed-price-type contracts should be awarded to the lowest responsible offerors without regard to the amount of their profits. Under these circumstances, the profit that is anticipated or, in fact, earned should not be of concern to the Government. In such cases, if a low offeror earns a large profit, it should be considered the normal reward of efficiency in a competitive system and efforts shall not be made to reduce such profits.

3-808.2 *Weighted Guidelines Method.*

(a) *General.*

(1) The weighted guidelines method provides contracting officers with (i) a technique that will insure consideration of the relative value of the appropriate profit factors described in 3-808.4 in the establishment of a profit objective and the conduct of negotiations; and (ii) a basis for documentation of this objective, including an explanation of any significant departure from it in reaching a final agreement. The contracting officer's analysis of these profit factors is based on information available prior to negotiations. Such information is furnished in proposals, audit data, performance reports, preaward surveys and the like. Except as set forth in (b) below, the weighted guidelines method shall be used in the negotiation of all contracts where cost analysis is performed for:

(i) the manufacturing of supplies and equipment;

(ii) research and development as described in 4-101(a)(1) through (5), encompassing research, exploratory development, advanced development, engineering development, and operational systems development;

(iii) services as described in 4–101(a)(6) and 22-101.

a. The profit objective for manufacturing contracts shall be computed, except as indicated in *e.* below, using the manufacturing weighted guidelines method, which provides profit opportunity based on facilities capital investment.

b. The profit objective for research and development contracts shall be computed using the research and development weighted guidelines method unless, in the judgement of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

c. The profit objective for service contracts shall be computed using the service contract weighted guidelines method unless, in the judgement of the contracting officer, a significant amount of facilities is required for efficient contract performance, in which case the manufacturing weighted guidelines shall be used.

d. In determining whether a particular contract shall be classified as manufacturing, research and development, or services, primary reliance shall be placed on the nature of the work to be performed, as indicated by the coding for item 10A of the DD Form 350 (see DOD 4105.61-M, Department of Defense Procurement Coding Manual, Volume 1), notwithstanding the appropriation or negotiation authority used. The following guidelines shall apply:

(i) *Manufacturing Weighted Guidelines.* Contracts coded under Section I, Part C, Supplies and Equipment.

(ii) *Research and Development Weighted Guidelines.* Contracts coded under Section I, Part A, Research, Development, Test and Evaluation, except for contracts coded as AD2-, Defense Services, and A- -6, Management and Support.

(iii) *Services Weighted Guidelines.* Contracts coded under Section I, Part B, Other Services and Construction; and under Section I, Part A, as AD2- and as A- -. Note, however, that there are blanket exceptions for certain services in 3–808.2(b).

e. The categories listed above are intended to be used as a point of departure in determining which weighted guidelines method applies. Many contracts for research and development and for services will require a significant amount of facilities for efficient contract performance. When this is the case, the manufacturing weighted guidelines method shall be used. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In such cases, the research and development weighted guidelines method shall be used. Contracting officers shall apply sound judgement in determining which weighted guidelines method is most appropriate for a particular contracting situation. The difference in profit objectives that would result from the application of alternative weighted guidelines methods shall not be a consideration in making this determination.

f. In determining whether a significant amount of facilities is required for efficient contract performance, the contracting officer should assess the facilities needed, including contractor owned and leased and Government owned. When there is a relatively small amount of facilities capital cost of money allocated to the contract because some facilities are provided through operating leases and by the Government, this does not necessarily mean that an insignificant amount of facilities is required for efficient contract performance.

g. When a method other than the manufacturing weighted guidelines method is used to establish the prenegotiation profit objective, the profit objective shall be reduced by the amount of facilities capital cost of money allowed in accordance with 15–205.50. If the contractor does not propose this cost, a provision shall be inserted in the contract that facilities capital cost of money is not an allowable cost (see 3–501, Part I, Section H(iv)). On cost-plus-award-fee contracts, the base fee shall be reduced by the amount of facilities capital cost of money or the contract shall contain a provision to disallow the cost.

(2) The contractor's proposal should include cost information for evaluation and a total profit figure. Contractors shall not be required to submit the details of their profit objectives but they shall not be prohibited from doing so if they desire. Elaborate and voluminous presentations are neither required nor desired and may indicate a low index of cost effectiveness, which fact itself shall be taken into consideration by the contracting officer.

(3) The negotiation process does not contemplate or require agreement on either estimated cost elements or profit elements, although the details of analysis and evaluation may be discussed in the fact-finding phase of the negotiation. If the difference between the contractor's profit objective and the contracting officer's profit objective is relatively small, no discussion of individual factors may be necessary. If the negotiating parties' objectives are relatively far apart, a disclosure of weightings and rationale by both parties may be made concerning the total assigned to contractor effort, contractor risk, facilities investment, and special factors. By thus developing a mutual understanding of the logic of the respective positions, an orderly progression to final agreement should result. Simultaneous, not sequential, agreement will be reached on cost, any incentive profit-sharing formulas or limitation on profits, and price. The profit objective is a part of an overall negotiation objective which, as a going-in objective, bears a distinct relationship to the target cost objective and any proposed sharing arrangement. Since the profit is merely one of several interrelated variables, the Government negotiator shall not complete the profit negotiation without simultaneously agreeing on the other variables. Specific agreement on the exact weights or values of the individual factors is not required and shall not be attempted.

(b) *Exceptions.*

(1) Under the following listed circumstances, other methods for establishing profit objectives may be used.

(i) Architect-engineering contracts;
(ii) Management contracts for operation and/or maintenance of Government facilities;
(iii) Construction contracts;
(iv) Contracts primarily requiring delivery of material supplied by subcontractors;
(v) Termination settlements;
(vi) Cost-plus-award-fee contracts;
(vii) Contracts not expected to exceed $100,000; and
(viii) Unusual pricing situations where the weighted guidelines method has been determined to be unsuitable. Such exceptions shall be justified in writing and shall be authorized by the head of the contracting activity.

(2) If the contracting officer makes a written determination that the pricing situation meets any of the circumstances set forth above and that application of the manufacturing weighted guidelines will result in an inequitable profit objective, other methods for establishing the profit objective may be used. These methods shall be supported in a manner similar to that used in the weighted guidelines (profit factor breakdown and documentation of profit objectives); however, investment or other factors that would not be applicable to the contract shall be excluded from the profit objective determination. It is intended that the methods will result in profit objectives for noncapital intensive contracts that are below those generally developed for capital intensive contracts.

(c) *Application to Subcontracts.* The prime contractor may use the weighted guidelines or a structured approach that discriminates among different levels of investment if the acquisition would be subject to the weighted guidelines under a prime contract. (For applicability see 3-1300.1(c).) If the acquisition falls into one of the exceptions to the weighted guidelines in 3-808.2(b)(1), the prime contractor may use another method to establish profit objectives. In the absence of a structured approach that discriminates among different levels of investment, similar to the weighted guidelines, the profit objective will be reduced by the amount of facilities capital cost of money allowed in accordance with 15-205.50.

(d) *Limitation.* In the event this or any other method would result in establishing a fee objective in violation of limitations established by statute or this regulation, the maximum fee objective shall be the percentage allowed pursuant to such limitations. (See 3-405.) No local administrative ceilings on profit shall be permitted.

3-808.3 *Profit Objective.*

(a) A profit objective is that part of the estimated contract price objective or value which, in the judgment of the contracting officer, is appropriate for the acquisition being considered, covering the profit or fee element of the price objective. This objective should realistically reflect the total overall task to be performed and the requirements placed on the contractor. Prior to the negotiation of a contract, change order, or contract modification where cost analysis is undertaken, the negotiator shall develop a profit objective. The weighted guidelines method, if applicable, shall be used for developing this profit objective. If a change or modification is of a relatively small dollar amount and is basically the same type of work as required in the basic contract, the application of the weighted guidelines method will generally result in a profit objective similar to the profit objective in the basic contract and, therefore, this basic rate may be applied to the contract change or modification. In cases where the change or modification calls for substantially different work, then the basic contract profit and the contractor's effort may be radically changed and a detailed analysis is necessary. Also, if the dollar amount of the change or contract modification is very significant in comparison to the contract dollar amount, a detailed analysis shall be made.

(b) Development of a profit objective should not begin until after a thorough—

(i) review of proposed contract work;

(ii) review of all available knowledge regarding the contractor, pursuant to Section I, Part 9, including capability reports, audit data, preaward survey reports and financial statements, as appropriate; and

(iii) analysis of the contractor's cost estimate and comparison with the Government's estimate or projection of cost.

3-808.4 *Profit Factors.*

(a) The following factors shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each factor shall be used in all instances where the weighted guidelines method is used.

	WEIGHT RANGES		
	Manufacturing*	R&D	Services
A. CONTRACTOR EFFORT			
Material Acquisition			
Subcontract Items	1 to 5%	1 to 5%	1 to 5%
Purchased Parts	1 to 4%	1 to 4%	1 to 4%
Other Material	1 to 4%	1 to 4%	1 to 4%
Engineering			
Direct Labor	9 to 15%	9 to 15%	N/A
Manufacturing			
Direct Labor	5 to 9%	5 to 9%	N/A
Services			
Direct Labor	N/A	N/A	5 to 15%
Overhead	N/A	N/A	4 to 8%
Other			
General Management	6 to 8%	6 to 8%	6 to 8%
B. CONTRACTOR RISK	0 to 8%	0 to 7%	0 to 4%
C. FACILITIES INVESTMENT	16 to 20%	N/A	N/A
D. SPECIAL FACTORS			
Productivity	See 3-808.8(a)	N/A	N/A
Independent Development	1 to 4%	1 to 4%	N/A
Other	-5 to +5%	-5 to +5%	-5 to +5%

* An adjustment factor of .7 is applied to the results of the Contractor Effort evaluation to arrive at the dollar profit objective for this factor (see DD Form 1547). Also see 3-1300.5(a)(2).

(b) Under the weighted guidelines method, the contracting officer shall first measure the "Contractor's Effort" by the assignment of a profit percentage, within the designated weight ranges, to each element of contract cost recognized by the contracting officer. Although certain classifications of acceptable cost, including travel, subsistence, facilities, test equipment, special tooling, federal manufacturers' excise taxes, and royalty expenses, may have been historically excluded from the base upon which profit has been computed, they shall not be excluded when using the weighted guidelines method. Not to be included for the computation of profit as part of the cost base is the amount calculated for the cost of money for facilities capital. How this cost is determined and how it will be applied and administered is fully set forth in 3-1300.

(c) The suggested categories under the Contractor's Effort are similar to those on the Contract Pricing Proposal (DD Form 633). Often, individual proposals will be in a different format, but, since these categories are broad and basic, they provide sufficient guidance to evaluate all other items of cost.

(d) After computing a total dollar profit for the Contractor's Effort, the contracting officer then shall add the specific profit dollars assigned for cost risk, facilities investment risk, and special factors. Weighted Guidelines Profit/Fee Objective (DD Form 1547) is to be used, as appropriate, to facilitate the calculation of this profit objective. (See F-200.1547.)

(e) The weighted guidelines method was designed for arriving at profit or fee objectives for other than nonprofit organizations. However, if appropriate adjustments are made to reflect differences between profit and nonprofit organizations, the weighted guidelines method can be used as a basis for arriving at fee objectives for nonprofit organizations. Therefore, the policy of the Department of Defense is to use the weighted guidelines method, as modified in (2) below, to establish fee objectives that will stimulate efficient contract performance and attract the best capabilities of nonprofit organizations to defense-oriented activities. The modifications shall not be applied as deductions against historical fee levels but to the fee objective for such a contract, as calculated under the weighted guidelines method.

(1) For purposes of this subparagraph, nonprofit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

(2) For contracts with nonprofit organizations where fees are involved, the following adjustments are required in the weighted guidelines method.

(i) An adjustment of -1 percent of the total effort shall be assigned in all cases where the manufacturing weighted guidelines method is used. An adjustment of -3 percent of the total effort shall be assigned in all cases where the research and development or services weighted guidelines method is used.

(ii) The weight range under "Contractor Cost Risk" shall be -1 percent to 0 percent in lieu of 0 percent to 8 percent for contracts with those nonprofit organizations, or elements thereof, identified by the Secretary of Defense or the Secretary of a Department (or their respective designees) as receiving sustaining support on a cost-plus-a-fixed-fee basis from a particular Department or Agency of the Department of Defense.

(f) In making a judgment of the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluating them as set forth herein.

3-808.5 *Contractor Effort.*

(a) *General.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is apart from the contractor's responsibility for contract performance, takes into account what resources are necessary and what the contractor must do to accomplish a conversion of ideas and materials into the final product called for in the contract. This is a recognition that, within a given performance output or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value and quantity, and that the profit objective should reflect the extent and nature of the contractor's contribution to total performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows.

(b) *Material Acquisition (Subcontracted Items, Purchased Parts, and Other Material).* Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required purchased parts, subcontracted items, and other materials, including special tooling. This evaluation shall include consideration of the number of orders and suppliers and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will obtain the material and tooling by routine orders from readily available supplies (particularly those of substantial value in relation to the total contract cost) or by detailed subcontracts, for which the prime contractor will be required to develop complex specifications involving creative design or close tolerance manufacturing requirements. Consideration shall be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition. These determinations shall be made for purchases of raw materials or basic commodities, purchases of processed material, including all types of components of standard or near standard characteristics, and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In the application of this criterion, it should be recognized that the contribution of the prime contractor to his purchasing program may be substantial. This may apply in the management of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor's representative. Recognized costs proposed as direct material costs, like scrap charges, shall be treated as material for profit evaluation. If intracompany transfers are accepted at price, in accordance with 15-205.22(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material labor, and overhead. Normally, the lowest unadjusted weight for direct material is 2 percent. A weighting of less than 2 percent would be appropriate only in unusual circumstances when there is a minimal contribution by the contractor.

(c) *Conversion (Engineering, Manufacturing, and Service Labor).* Analysis of the engineering, manufacturing, and service labor items of the cost content of the contract shall include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit dollars, consideration shall be given to the amount of notable scientific talent or unusual or scarce engineering talent needed in contrast to journeyman engineering effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance and the corresponding need for engineering supervision and coordination shall be evaluated. Similarly, the variety of manufacturing labor skills required and the contractor's manpower resources for meeting these requirements shall be considered. Service contract labor shall be evaluated in a like manner by assigning higher weights to engineering or professional-type skills and lower weights to semiprofessional or other type skills required for contract performance. A weighting in excess of 10 percent for service contract labor will be justified normally only when the quality, skill, and experience of the service contract labor warrants a corresponding weighting under a research and development contract.

(d) *General Management (Overhead and G&A).*

(1) Analysis of these overhead items of cost includes the evaluation of the makeup of these expenses and how much they contribute to contract performance. This analysis shall include a determination of the amount of labor within these overhead pools and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements shall be given the same profit consideration that they would receive if they were treated as direct labor. The other elements of these overhead pools shall be evaluated to determine whether they are routine expenses, like utilities, depreciation, and maintenance, and hence given lesser profit consideration, or whether they are significant contributing elements. The composite of the individual determinations in relation to the elements of the overhead pools will be the profit consideration given the pools as a whole. The procedure for assigning relative values to these overhead expenses differs from the method used in assigning values of the direct labor. The upper and lower limits assignable to the direct labor are absolute. In the case of overhead expenses, individual expenses may be assigned values outside the range as long as the composite ratio is within the range.

(2) It is not necessary that the contractor's accounting system break down the overhead expenses within the classifications of engineering overhead, manufacturing overhead, and general and administrative expenses, unless dictated otherwise by Cost Accounting Standards (CAS). The contractor whose accounting system only reflects one overhead rate on all direct labor need not change the system (if CAS exempt) to correspond with the above classifications. In evaluating such a contractor's overhead rate, the contracting officer can break out the applicable sections of the composite rate which can be classified as engineering overhead, manufacturing overhead, and general and administrative expenses and follow the appropriate evaluation technique.

(3) There is a critical factor to consider in the determination of profit in this area. Management problems surface in various degrees and the management expertise exercised to solve them shall be considered as an element of profit. For example, a new program for an item that is on the cutting edge of the state of the art will cause more problems and require more managerial time and abilities of a higher order than a follow-on contract. If new contracts create more problems and require a higher profit weight, follow-ons shall be adjusted downward as many of the problems shall have been solved. In any event an evaluation shall be made of the underlying managerial effort involved on a case-by-case basis.

(4) It may not be necessary for the contracting officer to make a separate profit evaluation of overhead expenses with each acquisition of substantially the same product with the same contractor. Where an analysis of

the profit weight to be assigned to the overhead pool has been made, the weight assigned may be used for future contracts with the same contractor until there is a change in the cost composition of the overhead pool or the contract circumstances, or until the factors discussed in (3) above are relevant.

3-808.6 *Contract Cost Risk.*

(a) *General.*

(1) This factor reflects the policy of the Department of Defense that contractors bear an equitable share of contract cost risk, and to compensate them for the assumption of that risk. A contractor's risk associated with costs to perform under a Government contract is usually minimal under cost-reimbursement-type contracts, However, as acquisitions progress from basic research through follow-on production and supply contracts, the use of increased contractor-risk-assumption-type contracts is appropriate for increasing the contractor's responsibility for performance. The generally accepted progression of the acquisition spectrum ranging from basic research through supply acquisitions and from cost to firm fixed-price contracts, is shown below:

	TYPE OF EFFORT	TYPE OF CONTRACT
1.	Basic Research	Cost, CPFF
2.	Applied Research	Cost, CPFF
3.	Exploratory Development	Cost, CPFF
4.	Advanced Development	CPFF, CPAF
5.	Engineering Development	CPFF, CPAF, CPIF
6.	Operational System Development	CPIF, CPAF, FPI
7.	First Production	FPI
8.	Follow-on Production	FPI, FFP
9.	Supply	FFP

Research and the various categories of development are defined in 4-101.

(2) In developing the prenegotiation profit objective, the contracting officer will need to consider strongly the type of contract anticipated to be negotiated and the associated contractor risk when selecting the position in the weight range for profit that is appropriate for the risk to be borne by the contractor. This is one of the most important factors in arriving at prenegotiation profit objectives.

(b) *Evaluation of Contractor's Assumption of Contract Cost Risk.*

(1) Evaluation of this risk requires a determination of (i) the degree of cost responsibility the contractor assumes, (ii) the reliability of the cost estimates in relation to the task assumed, and (iii) the complexity of the task assumed by the contractor. This factor is specifically limited to the risk of contract costs. Thus, such risks on the part of the contractor as reputation, losing a commercial market, losing potential profits in other fields, or any risk on the part of the contracting activity, such as the risk of not acquiring an effective weapon, are not within the scope of this factor.

(2) The first and basic determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk by contract cost by the Government and the contractor through the selection of contract type. The extremes are a cost-plus-fixed-fee contract, requiring only that the

contractor use his best efforts to perform a task, and a firm fixed-price contract for a complex item. A cost-plus-fixed-fee contract reflects a minimum assumption of cost responsibility, whereas a firm fixed-price contract reflects a complete assumption of cost responsibility.

(3) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. Prior production experience assists the contractor in preparing reliable cost estimates on new contracts for similar equipment. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(4) The third determination is that of the difficulty of the contractor's task. The contractor's task can be difficult or easy, regardless of the type of contract.

(5) Contractors are likely to assume greater cost risk only if contracting officers objectively analyze the risk incident to proposed contracts and are willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract will not justify a reward for risk in excess of 0.5 percent, nor will a firm fixed-price contract justify a reward of less than the minimum on the weighted guidelines. Where proper contract-type selection has been made, the reward for risk, by contract type, will usually fall into the following percentage ranges:

(i) type of contract and percentage ranges for profit objectives developed by using the manufacturing weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%
With Multiple Incentives	1.5 to 3%
Fixed-Price-Incentive	
With Cost Incentives Only	3 to 5%
With Multiple Incentives	4 to 6%
Prospective Price Redetermination	4 to 6%
Firm Fixed-Price	6 to 8%

(ii) type of contract and percentage ranges for profit objectives developed by using the research and development weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	
With Cost Incentives Only	1 to 2%
With Multiple Incentives	1.5 to 3%
Fixed-Price-Incentive	
With Cost Incentives Only	2 to 4%
With Multiple Incentives	3 to 5%
Prospective Price Redetermination	3 to 5%
Firm Fixed-Price	5 to 7%

(iii) type of contract and percentage ranges for profit objectives developed by using the service contract weighted guidelines method:

Cost-Plus-Fixed Fee	0 to 0.5%
Cost-Plus-Incentive Fee	1 to 2%
Fixed-Price-Incentive	2 to 3%
Firm Fixed-Price	3 to 4%

a. These ranges may not be appropriate for all acquisitions. For instance, a fixed-price-incentive contract that is closely priced with a low ceiling price and high incentive share may be tantamount to a firm fixed-price contract. In this situation, the contracting officer may determine that a basis exists for high confidence in the reasonableness of the estimate and that little opportunity exists for cost reduction without extraordinary efforts. On the other hand, a contract with a high ceiling and low incentive formula can be considered to contain cost-plus-incentive-fee contract features. In this situation, the contracting officer may determine that the Government is retaining much of the contract cost responsibility and that the risk assumed by the contractor is minimal. Similarly, if a cost-plus-incentive-fee contract includes an unlimited downward (negative) fee adjustment on cost control, it could be comparable to a fixed-price-incentive contract. In such a pricing environment, the contracting officer may determine that the Government has transferred a greater amount of cost responsibility to the contractor than is typical under a normal cost-plus-incentive-fee contract.

b. The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a contract form. It can cause risk to increase or decrease in terms of both cost and performance. This consideration shall be a part of the contracting officer's overall evaluation in selecting a factor to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor and the contract cost risk evaluation, as a result, may be below the range that would otherwise apply for the contract type being proposed. This situation will be found to exist only in a few extraordinary situations under circumstances of (i) a follow-on production contract, in which a substantial portion of the total contract costs represents a single subcontract or a few subcontracts, (ii) the fullest incentive reward and penalty feature on cost performance having been passed by the prime contractor to the subcontractor. In an acquisition in which all of these circumstances are found to exist, a lower than usual profit weight may be applied to the aggregate of all recognized costs including the subcontract portion. The contract cost risk evaluation shall not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts without any substantial transfer of contractor's risk, since this can result eventually in a lessening of the amount of work let on subcontracts.

c. In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, unpriced change orders, and unpriced orders, under BOAs, consider the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk remained substantially unchanged. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all attendant circumstances and not be just the portion of costs incurred, or percentage of work completed, prior to definitization.

d. Time and material, labor hour, and overhaul contracts priced on a time and material basis shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of contract cost risk.

e. In determining the contract cost risk percentage under CONTRACTOR RISK in profit factors of the weighted guidelines provided in 3-808.4(a), it is appropriate to consider additional risks associated with foreign military sales (FMS). To be recognized, an additional cost risk factor shall be demonstrated by the contractor to be significant and over and above that normally present in DoD contracts for similar items. If an additional cost risk factor associated with FMS is recognized, the total profit under the CONTRACTOR RISK section (3-808.4(a)) shall not exceed the limits set forth in 3-808.6(b)(5) for different types of contracts. For example, when the manufacturing weighted guidelines method is used, the limitation will be 0.5 percent for CPFF contracts, 3 percent for CPIF contracts, 6 percent for FPI contracts and 8 percent for FFP contracts. The additional cost risk factor shall not apply to foreign military sales made from inventories or stocks nor to acquisitions made under DoD cooperative logistics support arrangements.

3-808.7 *Facilities Capital Investment.* This element relates to the consideration to be given in the profit objective in recognition of the investment risk associated with the facilities employed by the contractor. Sixteen to twenty percent of the net book value of facilities capital allocated to the contract is the normal range of weight for this profit factor. The key factors that the contracting officer shall consider in evaluating this risk are:

(i) the overall cost effectiveness of the facilities employed;
(ii) whether the facilities are general purpose or special purpose items;
(iii) the age of the facilities;
(iv) the undepreciated value of the facilities;
(v) the relationship of the remaining writeoff life of the investment and the length of the program(s) or contract(s) on which the facilities are employed; and
(vi) special contract provisions that reduce the contractor's risk of recovery of facilities capital investment (termination-protection clauses, multiyear cancellation ceilings, etc.).

To assist in evaluating new investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities are part of an approved investment plan and that achievable benefits to the Government will result from the investment. New industrial facilities and equipment shall receive maximum weight when they—

(i) are to be acquired by the contractor primarily for defense business;
(ii) have a long service life;
(iii) have a limited economic life due to limited alternative uses; and
(iv) reduce the total life cycle cost of the products produced for the Department of Defense.

To the extent that the new investment represents routine replacement of existing assets, a lesser weight shall be assigned.

3-808.8 *Special Factors.*

(a) *Productivity.*

(1) *General.* A key objective of the DoD profit policy is to reduce the cost of defense preparedness by incentivizing defense contractors' investment in modern cost-reducing facilities and other improvements in efficiency. To the extent that costs serve as the basis for pricing (both cost and profit), success in reducing costs can serve, in turn, to reduce profit dollars opportunity. For example, a fixed-price incentive-type contract is typically used for the first production contract of a major weapon system program. The incentive to increase productivity and reduce cost within one contract works against a contractor on follow-on production contracts because the reduced level of cost becomes a part of the basis for pricing subsequent contracts. In order to mitigate the loss of profit dollars opportunity that occurs when costs are reduced due to productivity gains, a special "Productivity Reward" may be included in the prenegotiation profit objective of a pending acquisition under certain circumstances.

(2) *Applicability Criteria.* The "Productivity Reward" may be applied when the following criteria are met:

(i) The pending acquisition involves a follow-on production contract.
(ii) Reliable actual cost data is available to establish a fair and reasonable cost baseline.
(iii) Changes made in the configuration of the item being acquired are not of sufficient magnitude to invalidate price comparability.

(3) *Implementation Procedures.* The amount of productivity reward for a given contract is based on the estimated cost reduction that can be attributed to productivity gains. Set forth below are principles and procedures that apply to estimating cost reductions and calculating the productivity reward:

(i) The contractor shall prepare and support the cost reduction estimate.
(ii) The overall contract cost decrease shall be based on estimated decreases measured at the unit cost level.
(iii) The lowest average unit cost (exclusive of profit) for a preceding production run shall serve as the unit cost baseline.
(iv) A technique shall be employed to determine that portion of the cost decrease attributable to productivity gains as op-

posed to the effects of quantity differences between the base contract and the pending acquisition.

(v) When the parties agree that the estimated overall contract cost decrease is materially affected by price level differences between the base period and the current point in time, an economic price adjustment may be applied to the estimate.

(vi) The productivity reward shall be calculated by multiplying the contract cost decrease due to productivity gains by the base profit objective rate.

(vii) The degree of review and validation of the data supporting the productivity reward calculation shall be commensurate with the materiality of this profit element in relation to the overall price objective.

There may be several methods advanced, by both contracting officers and contractors, to quantify productivity gains. Any technique may be acceptable, provided it takes into account equitably the principles and procedures listed above.

(b) *Independent Development.* Contractors who develop items that have potential military application without Government assistance are entitled to special profit consideration on those items as a special profit factor to be considered within the weighted guidelines in arriving at a profit objective. One to four percent of recognized cost is established as the normal range of value for this profit factor. The criteria for selection of the specific percentage shall be the importance of the development in advancing defense purposes, the demonstratable initiative in determining the need and application of the development, the extent of the contractor's cost risk, and whether the development cost was recovered directly or indirectly from Government sources.

(c) *Other Factors.* A composite percentage weight within the range of −5 percent to +5 percent of the basic profit objective may be assigned to other profit factors in arriving at the total profit objective. These other profit factors, which may apply to special circumstances or particular acquisitions, relate to contractor participation in the Government's Small Business, Small Disadvantaged Business, and Labor Surplus Programs, and to special situations not specifically set forth elsewhere in these guidelines. Participation that is rated as merely satisfactory shall be assigned a weight of zero, generally. Evidence of energetic support may justify a plus weight and poor support a negative weight. Special situations may be assigned either a plus or minus weight depending on the particular circumstances of the acquisition.

(1) *Small Business and Small Disadvantaged Business Participation.* The contractor's policies and procedures that energetically support Government small business and small disadvantaged business subcontracting programs, pursuant to 1-707 and 1-332, shall be given favorable consideration. Any unusual effort that the contractor displays in subcontracting with small business or small disadvantaged business concerns, particularly for development-type work likely to result in later production opportunities, and the overall effectiveness of the contractor in subcontracting with and furnishing assistance to such concerns shall be considered. Conversely, failure or

unwillingness on the part of the contractor to support Government small business or small disadvantaged business policies shall be viewed as evidence of poor performance for the purpose of establishing a profit objective.

(2) *Labor Surplus Area Participation.* A similar review and evaluation (as required in (1) above) shall be given to the contractor's policies and procedures supporting the Government's Labor Surplus Area Program, pursuant to 1-805.1. In particular, favorable consideration shall be given to a contractor who (i) makes a significant effort to help find jobs and provide training for the hardcore unemployed, or (ii) promotes maximum subcontractor utilization of certified eligible concerns, as defined in 1-801.1.

(3) *Energy Conservation.* Favorable consideration shall be given to the contractor's initiatives and accomplishments in the conservation of energy.

(4) *Special Situations.* Particular situations may justify use of a profit factor other than those specifically identified in these guidelines. These situations shall be identified and the reason(s) for their use documented in the records of price negotiation. Examples of such situations include contractor effort to exploit additional production cost-reduction opportunities or to improve or develop new product/manufacturing technologies to reduce production cost.

3-809 Contract Audit as a Pricing Aid.

(a) *General.* Contract audit services are available in two forms:

(i) Audit reports setting forth the results of auditors' reviews and analyses of cost data submitted by contractors as part of pricing proposals, reviews of contractors' accounting systems, estimating methods, and other related matters; and

(ii) "On-the-spot" personal consultation and advice to contracting and contract administration personnel in connection with analyses of contractors' cost representations and related matters by liaison auditors stationed at contracting and contract administration offices.

Contract auditors are professional accountants who, although organizationally independent, are the principal advisors to contracting officers on contractor accounting and contract audit matters. The terms "audit review" and "audit" refer to examinations by contract auditors of contractors' statements of actual or estimated costs to the extent deemed appropriate by the auditors in the light of their experience with contractors and relying upon their appraisals of the effectiveness of contractors' policies, procedures, controls, and practices. Such audit reviews or audits may consist of desk reviews, test checks of a limited number of transactions, or examinations in depth, at the discretion of the auditor.

(b) *Audit Reports on Contractor Price Proposals.*

(1) The auditor's role in the evaluation of contractor pricing proposals is set out in detail in 3-801. The procedures

contemplate that the report of engineering appraisal (as to the need for the kinds and quantities of labor and material) shall be provided the auditor in order that the DCAA report may reflect the monetary effect of both the auditor's and the engineer's recommendations. Contracting officers should provide as much time as possible for the auditor to perform his evaluation, whenever possible providing advance notice that a request will be forthcoming. Although price proposals are given the highest priority by DCAA, advance notice of price proposals will assist the auditor in providing timely audit advice to the contracting officer.

(2) DCAA provides procurement liaison auditors (PLAs) at most major procurement and contract administration offices to facilitate the receipt and use of audit service and to provide accounting and audit advice as to whether or not audit review of a price proposal should be waived.

(3) In submitting his audit report, the auditor shall include comments in regard to the extent to which discrepancies or mistakes of fact in the proposal have been discussed with the contractor. Unless specifically requested to do so by the contracting officer, the auditor shall not discuss his conclusions or recommendations regarding the contractor's estimated or projected costs.

(c) *Additional Functions of the Contract Auditor.*

(1) Under cost-reimbursement type contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts which provide for reimbursement of costs, time and material contracts, and labor-hour contracts:

(i) The contract auditor is the authorized representative of the contracting officer for the purpose of examining reimbursement vouchers received directly from contractors, transmitting those vouchers approved for provisional payment to the cognizant disbursing officer and issuing DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with a copy to the cognizant ACO, with respect to costs claimed but not considered allowable. In the case of costs suspended, if the contractor disagrees with the suspension action by the contract auditor and the difference cannot be resolved, the contractor may appeal in writing to the cognizant ACO, who will make his determination promptly in writing. In the case of costs disapproved, the DCAA Form 1 shall include the following statement:

> As to any disapproved costs identified herein, this Notice constitutes a final decision of the Contracting Officer, effective sixty days after the date of its receipt by the Contractor, unless the Contractor mails or furnishes to the cognizant Administrative Contracting Officer a written appeal before the expiration of such sixty-day period. If this Notice becomes a final decision of the Contracting Officer by virtue of expiration of the sixty-day period, it may be appealed in accordance with the provisions of the "Disputes" clause of the contract identified above. If the Contractor decides to make such an appeal, written notice thereof (in triplicate) must be mailed or otherwise furnished to the Contracting Officer within thirty days from the date this decision becomes effective. Such notice should indicate that an appeal is intended and should reference this decision and identify the contract by number. The Armed Services Board of Contract Appeals is the authorized representative of the Secretary for

hearing and determining such disputes. The Rules of the Armed Services Board of Contract Appeals are set forth in the Armed Services Procurement Regulation, Appendix A, Part 2.

If the contractor appeals in writing to the ACO from a disallowance action by the contract auditor within the 60–day period mentioned above, the ACO will make his determination in writing, as promptly as practicable, as a final decision of the contracting officer (see 1–314 re decisions under the Disputes clause) and mail or otherwise furnish a copy to the contractor. In those instances where the ACO does not sustain the contract auditor's disallowance the ACO shall document the contract file to set forth the specific reasons why reinstatement of the disallowed cost was considered appropriate. A copy shall be furnished to the contract auditor. In addition, the contracting officer may direct the issuance of DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," with respect to any cost that he has reason to believe should be suspended or disapproved. The contract auditor will approve fee portions of vouchers for provisional payment in accordance with the contract schedule and any instructions received from the administrative contracting officer. Completion vouchers shall be forwarded to the ACO for approval and transmittal to the cognizant disbursing officer.

(ii) The contract auditor shall be responsible for making appropriate recommendations to the ACO concerning the establishment of interim overhead billing rates, when such rates are provided for in the contract.

(2) Under Cost-Reimbursement Type Contracts With Canadian Contractors:

(i) On contracts with the Canadian Commercial Corporation, audits are automatically arranged by the Department of Defence Production (Canada) (DDP) in accordance with agreement between Departments of the Army, Navy, and Air Force; Defense Supply Agency; and Department of Defence Production (Canada) (see 6–503(c)). Audit reports are furnished to DDP. Upon advice from DDP, the Canadian Commercial Corporation (CCC) will certify the invoice and forward it with Standard Form 1034 (Public Voucher) to the ACO for further processing and transmittal to the disbursing officer.

(ii) On contracts placed directly with Canadian firms, audits are requested by the ACO from the Audit Services Branch, Comptroller of the Treasury, Department of Finance, Ottawa, Ontario, Canada. Invoices are approved by the auditor on a provisional basis pending completion of the contract and final audit. These invoices, accompanied by Standard Form 1034 (Public Voucher) are forwarded to the ACO for further processing and transmittal to the disbursing officer. Periodic advisory audit reports are furnished directly to the ACO. In the event that costs claimed are suspended or disapproved, the ACO shall issue the DCAA Form 1, "Notice of Contract Costs

Suspended and/or Disapproved" to the contractor. DCAA Form 1 will be processed in the same manner as indicated in (1)(i) above with regard to contractor appeals, and shall contain the statement prescribed therein with respect to costs disapproved.

(3) Responsibilities for Pre-Award Surveys and Reviews: Pre-Award surveys of potential contractors' competence to perform proposed contracts shall be managed and conducted by the contract administration office. When information is required on the adequacy of the contractor's accounting system or its suitability for administration of the proposed type of contract, such information shall always be obtained by the ACO from the auditor. The contract administration office shall be responsible for advising the PCO on matters concerning the contractor's financial competence or credit needs.

(4) Reviews of Contractors' Estimating Systems:

(i) The establishment, maintenance, and consistent use of formal cost estimating systems by contractors is to the mutual benefit of the Government and industry, particularly where a large portion of the contractor's business is defense work and there are a number of significant proposals requiring review. Procuring activities and contract administration activities are required to furnish full support to a program of encouraging major defense contractors to formalize and follow good estimating procedures. It is recognized that estimating procedures will vary among contractors, and may vary between plants or divisions of a contractor due to differences in products, size and methods of operations, production vs. research, and other factors. While formal systems do not eliminate the need for judgmental factors to be applied by contractors in developing cost proposals, they do provide a sound foundation for the systematic and orderly application of these judgment factors to specific proposals. The consistent preparation of proposals in accordance with an acceptable estimating system is of material benefit in assuring both the contractor and the Government that proposals are realistically and reasonably priced, that the 3-807.3 requirements for utilizing current, accurate, and complete cost and pricing data in developing the proposal are met, and that under-estimating and overestimating of contract costs are minimized. Some of the advantages of sound estimating procedures are: a greater degree of confidence can normally be placed in the accuracy and reliability of contractors' individual pricing proposals; it expedites the negotiation process; it reduces the amount of detailed explanation of estimating processes on each individual proposal as required by the notes on DD Form 633; and, as in the case of the well established practice regarding acceptable accounting systems, reduces the scope of reviews performed by audit and other technical and procurement personnel.

(ii) A regular program for conducting reviews of selected contractors' estimating systems or methods shall be established and managed by the Defense Contract Audit Agency. However, reviews will not be conducted at contractor locations that are CWAS qualified. Reviews and reports shall be accomplished as a joint contract audit and contract administration office team effort, with the contract auditor designated as its head. Reviews shall be tailored to take full advantage of the day-to-day work done as an integral part of both the contract audit and contract administration activities. The program established by the contract audit activity shall be coordinated with the appropriate contract administration activity to assure that team membership includes qualified technical specialists, and that adequate personnel resources are made available to accomplish the program. A copy of the survey report, together with a copy of the official notice of corrective action required, shall be furnished to each purchasing and contract administration office having substantial business with that contractor. Any significant deficiencies in the system not corrected by the contractor shall be referenced in Part V of subsequent Pre-Award Surveys and will be considered in subsequent proposal reviews and by the ACO and PCO in negotiating with, and in determining the reasonableness of prices proposed by, that contractor. Where these deficiencies continue to exist and where they have an adverse effect on prices, the problem should be brought to the attention of procurement officials at a level necessary to bring about corrective action.

(iii) Among the matters to be considered in determining the acceptability of a contractor's estimating system are the following:

- (A) responsibilities within the contractor's organization for originating, reviewing, and approving estimates;
- (B) procedures followed in developing estimates for each of the direct and indirect elements of cost;
- (C) the source of data used in developing the estimates and in assuring that such data is current, complete, and accurate;
- (D) the documentation developed and maintained by the contractor to support the estimate;
- (E) management support of the program review including approval of the estimate, controls established to assure consistent compliance with estimating procedures, and personnel training and evaluation programs; and
- (F) the extent of coordination and communication between the various elements of the contractor's organization responsible for the estimate.

(5) Cost Accounting Standards Board Rules and Regulations:

In accordance with Section III, Part 12 - Cost Accounting Standards, and Section XV - Contract Cost Principles and Procedures, the cognizant contract auditor shall be responsible for making recommendations to the ACO as to whether:

(i) a contractor's Disclosure Statement, submitted as a condition of contracting, adequately describes the actual or proposed cost accounting practices as required by Public Law 91–379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board;

(ii) a contractor's disclosed cost accounting practices are in compliance with Section XV and applicable Cost Accounting Standards;

(iii) a contractor's or subcontractor's failure to comply with applicable Cost Accounting Standards or to follow consistently his disclosed cost accounting practices has resulted, or may result in, any increased cost paid by the Government; and

(iv) a contractor's or subcontractor's proposed price changes, submitted as a result of changes made to previously disclosed or established cost accounting practices, are fair and reasonable.

(6) Procedures for Identifying Contractors' Unallowable Costs.

(i) The establishment, maintenance, and consistent use of procedures for identifying and segregating unallowable costs, which will assure compliance with CAS 405 and 15-201.6, will benefit both the Government and contractors. Such procedures may vary between plants or divisions of a contractor due to size, mix of business and complexity of organization. Some of the advantages of sound procedures are that:

(A) a greater degree of confidence can be placed on the accuracy and reliability of contractors' proposals, billings and claims;

(B) they expedite the negotiation process; and

(C) they may reduce the scope of reviews performed by audit and other technical and procurement personnel.

(ii) The responsible Federal Contract Audit organization shall review contractors' procedures and practices in conjunction with other contract audit activities. Deficiencies shall be reported to the cognizant ACO, and, as appropriate, PCOs having substantial business with the contractor. Among the matters to be considered in determining the adequacy of a contractor's procedures are its policy, practices and techniques for:

(A) assignment of responsibilities within the contractor's organization for reviewing and approving claims against the Government;

(B) identification of unallowable costs (expressly unallowable, mutually agreed to be unallowable or specifically designated as unallowable by written decision of the contracting officer) together with the individual employees incurring such costs;

(C) identification and computation of directly associated costs;
(D) assurance that unallowable and directly associated costs are not included in estimated costs proposed, or incurred amounts claimed by the contractor;
(E) coordination and communication between the elements of the contractor's organization that prepare proposals and claims and those responsible for identifying unallowable and directly associated costs; and
(F) assuring the adequacy of the documentation maintained by the contractor identifying the unallowable costs together with directly associated costs.

(iii) Documentation in support of the contractor's procedures shall be made available to authorized Government personnel. (See 3-801.5(b)(7).)

3-810 Exchange of Information. In appropriate cases it is desirable to exchange and coordinate specialized information regarding a contractor between Departments, bureaus, technical services, and other procuring activities since it will provide uniformity of treatment of major issues and it may aid in the resolution of particularly difficult or controversial issues.

3-811 Record of Price Negotiation.

(a) At the conclusion of each negotiation of an initial or a revised price, the contracting officer shall promptly prepare or cause to be prepared, a memorandum, setting forth the principal elements of the price negotiation, for inclusion in the contract file and for the use of any reviewing authorities. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishment of the initial or revised price, including the current status of the contractor's procurement system. The memorandum should include an explanation of why cost or pricing data was, or was not, required (see 3-807) and, if it was not required in the case of any price negotiation in excess of $100,000, a statement of the basis for determining that the price resulted from or was based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. If cost or pricing data was submitted and a certificate of cost or pricing data was required (3-807.6), the memorandum shall reflect the extent to which reliance was not placed upon the factual cost or pricing data submitted and the extent to which this data was not used by the contracting officer in determining his total price objective and in negotiating the final price. The memorandum shall also reflect the extent to which the contracting officer recognized in the negotiation that any cost or pricing data submitted by the contractor was inaccurate, incomplete, or non-current; the action taken by the contracting officer and the contractor as a result; and the effect, if any, of such defective data on the total price negotiated. Where the total price negotiated differs significantly from the total price objective, the memorandum shall explain this difference. When field pricing support is furnished, the contracting officer shall forward copies of the memorandum to the cognizant ACO and auditor. When appropriate, information on how the advisory services can be made more effective in future negotiations with the contractor should be provided separately.

(b) As part of the requirement in (a) above, determination of the profit or fee objective, in accordance with 3-808, shall be fully documented. Since the profit objective is the contracting officer's pre-negotiation evaluation of the total estimated profit under the proposed contract, the amounts set forth for each category of cost will probably change in the course of negotiation. Furthermore, the negotiated profit will probably vary from the profit objective, and from a detailed application of the weighted guidelines method to each element of the Contractor's Input to Total Performance as anticipated prior to negotiation. Since the profit objective is viewed as a whole rather than as its component parts, insignificant variations from the pre-negotiation profit objective, as a result of changes of the Contractor's Input to Total Performance need not be documented in detail. Conversely, significant deviations from the profit objective necessary to reach a final agreement on profit or fee shall be explained. The profit earned as a result of contract performance will generally vary from that anticipated at the time of negotiation.

(c) When the weighted guidelines method is not used because of unusual pricing situations (see 3–808.2(b)(2)), the contract file shall be documented to support the exceptions.

3–812 Disposition of Post Award Audits. An auditor's advisory report of post award reviews of cost and pricing data may result either from a specific request of a contracting officer (see 3–807.10) or from audit action initiated independent of a contracting officer's request. The contracting officer shall prepare a memorandum on each audit report indicating (1) whether defective data were submitted and relied upon and (2) the results of any contract action taken. A copy of the memorandum shall be forwarded to the auditor issuing the audit report and to the cognizant administrative contracting officer.

3–813 Preproduction and Startup and Other Nonrecurring Costs.

(a) Estimates of preproduction and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurements (including spare parts or other support items).

(c) When it is anticipated that such costs will be a significant factor in the evaluation of proposals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(i) an estimate of the total of such costs;
(ii) the extent to which these costs are included in the proposed price; and
(iii) the intent to absorb, or plan for recovery, of any remaining costs.

When entering into a contract with an offeror who has indicated that he intends to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future non-competitive procurement or other pricing action.

3-814 Estimated Data Prices (DD Form 1423).

(a) The Department of Defense requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product or engineering value.

(b) When data are required to be delivered under a contract, 3-501(b) Section B(xiv) and Section C(xxxii) and 16-815 require inclusion in the solicitation of DD Form 1423, Contract Data Requirements List. The form and the provision included in the solicitation request the offeror to state what portion of the total price is estimated to be attributable to the production or development of the listed data for the Government (not to the sale of rights in the data). However, offerors' estimated prices may not reflect all such costs; and different offerors may reflect these costs in a different manner, for the following reasons:

(i) differences in business practices in competitive situations;
(ii) differences in accounting systems among offerors;
(iii) use of factors or rates on some portions of the data;
(iv) application of common effort to two or more data items;
(v) differences in data preparation methods among offerors.

For these and other reasons, data price estimates should not be used for contract pricing purposes without further analysis.

(c) The contracting officer shall assure that the contract does not include a requirement for data which the contractor has delivered or is obligated to deliver to the Government under another contract or subcontract, and that the successful offeror furnishes the certification required by the solicitation (see 3-501(b) Section B(xiv) and Section C(xxxii)). However, where duplicate data are desired, the contract price shall include the costs of duplication, but not of preparation, of such data.

(d) In the case of procurements of $100,000 or over, the contracting officer, after agreeing upon a negotiated contract price, will adjust the estimated prices in Blocks 26 of the original DD Form 1423 for the data items listed thereon to equal the amount included in the related priced contract line or subline item(s) for the data item(s). Adjusted DD Form 1423 will be maintained so as to be available at each procuring activity. The detachable portion of the DD Form 1423 (Blocks 17-26) with the estimated or adjusted prices shall not appear in the contract.

(e) When printing is to be procured as an integral part of a contract for other supplies or services, each requirement in the contract for printing shall be listed as a separate line item on DD Form 1423; and the approval or waiver obtained pursuant to 5-601 shall be appropriately identified.

3-815 Capital Investment Incentives.

(a) *General.* Although the DoD profit policy is normally sufficient encouragement to increase contractor investment, it is recognized that situations will arise when additional incentives may be appropriate. In these individual cases, a special Capital Investment Incentive clause may be negotiated and included in contracts for research, development, and/or production of weapon

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systems or material to provide incentives to contractors to invest in severable plant equipment capital assets as authorized herein (see 1-315). Such clause must be tailored to the requirements of the individual situation, and then only after a careful analysis of the benefits in each case in made, to assure optimum results are obtained for the Government. This clause would become operative in the event that the contract or program is terminated or funds are not provided in subsequent fiscal years for the planned acquisition upon which the investment decision was based. Such clause may permit the Government to acquire specific capital investments at no more than the depreciated value. This value may be determined by considering a combination of investment incentives, income tax credits or incentives, and allowable depreciation costs pursuant to cost principles established in Section XV.

(b) *Scope.*

(1) This technique is designed to transfer to the Government some of the risk associated with acquisition of certain capital assets by contractors. Its purpose is to cover only specifically identified cost-effective capital assets. It is not to be used to override the general policy that all facilities needed for the performance of Government contracts will be provided by the contractor as set forth in Section XIII.

(2) Capital assets which may be covered by such an investment clause are subject to the following criteria:

(i) includes only severable industrial plant equipment, and other types of severable plant equipment with a unit value in excess of $10,000, including associated accessories which would be capitalized in accordance with the contractor's disclosed accounting practices, but excluding real property

(ii) the capital investment would not otherwise be made by the contractor except to substantially benefit the program(s) involved;

(iii) the overall savings that will accrue to the Government on the program(s) for covered equipment exceeds the related investment costs by a margin sufficient to make the acquisition economically viable;

(iv) the savings that will result from use of this equipment, as developed under (c) below, will be reflected in the pricing of the individual contracts.

(c) *Determination*. Prior to implementing this investment clause, the contracting officer shall make a written determination that the contractor will not make the investment without the use of this technique. This determination should be detailed and include the following elements:

(i) consideration of the alternatives of acquiring such equipment through the manner listed in 13-301(c);

(ii) an analysis of the costs of the investment and the overall cost savings to the Government, including the payback quantities and/or payback periods;

(iii) an assessment of the degree of competition present for the proposed requirement. If a competitive environment is present, the competition may cause the firms to consider bearing the total risks for the investments. When this technique is to be used, it shall be a factor in the source selection evaluation criteria;

(iv) an assessment stating the rationale why the DoD profit policy is insufficient motivation for the investment;

(v) other considerations which should be addressed are:

a. effect upon the contractor's make or buy plan;

b. subcontractor participation in the investment technique;

c. consistency of depreciation rates with 15–205.9;

(vi) any other matter which has a bearing on the investment plan.

(d) *Limitations.*

(1) This investment incentive is designed primarily for DoD programs which are listed in the Five Year Defense Program (FYDP) and designated as Defense System Acquisition Review Council (DSARC) programs, in accordance with DoD Directive 5000.1, "Acquisition of Major Defense Systems". This incentive may also be extended to other DoD programs provided approval is obtained from the Secretary of the Department. The program must provide for a sufficient buy to allow for amortization of the planned investment.

(2) The fiscal authority who commits funds to the resultant contract must certify that the following actions have been accomplished:

(i) the Approval Authority (*see 3–815(g)(1)*) has approved by fiscal year the amount of contingent Government liability;

(ii) the Approval Authority has notified the Congress in advance that the technique will be used on contracts for a specific weapon system or material program element. Unless there are unusual circumstances, this notification will be included in the justification material submitted to the Congress in support of authorization and appropriation requests. A copy of the notification shall be retained in the contract file.

(e) *Negotiation Requirements.*

(1) Since this investment incentive is predicated on the written determination specified in paragraph (c) above, the impact on contract cost will be recognized in the price(s) negotiated.

(2) In order for items of plant equipment to be covered, they must be listed (nomenclature and value) in the Capital Investment Incentive clause. The items of equipment can be incorporated in the contract using either or both of the following procedures:

(i) when the exact value and nomenclature of the item of plant equipment is known at the time of negotiations, it shall be listed in the investment clause at the time of the contract award. The contractor's proposal should reflect the impact on cost and other benefit to the Government that will accrue from use of the equipment in order to comply with Public Law 87–653;

(ii) if the exact value and nomenclature of each investment is not known at the time of negotiations and it can be mutually agreed that certain categories of plant equipment would benefit the Government, an additional provision to the investment clause should be used. This additional provision shall stipulate the conditions which the individual items of plant equipment must meet to be subsequently incorporated into the investment clause and shall establish the requirement for the contractor to submit financial and other justification necessary for the contracting officer to make the determination specified in (c) above. Such items of equipment will be incorporated into the contract by supplemental agreement and the price revised, as appropriate, *provided*: (*A*) they meet the contractual conditions and (*B*) the equipment value, when added to the value of previously covered equipment, will not exceed the stated dollar ceiling.

(3) The limit of the Government's contingent liability is subject to negotiation. Provision should be made to assume only that liability which is sufficient to motivate the contractor to invest.

(4) Application of the weighted guidelines in 3-808.4 should reflect the assumption of risk by the parties associated with items covered by this technique.

(f) *Contractual Requirements*. In order to incorporate this investment incentive, a special contractual Capital Investment clause shall be developed. Such a clause should include but not be limited to the following:

(1) A listing of the exact nomenclature and value of each item of plant equipment covered.

(2) A provision for additions to the listing after contract award, if appropriate. Such provision shall establish the conditions that must be met, the categories of equipment that will be covered and the requirement for such additions to be incorporated by contract modification. This provision should allow for removal of an item from coverage at the request of the contractor with the concurrence of the contracting officer.

(3) Criteria for ascertaining when this special provision can be invoked as well as the criteria which will cancel the Government's contingent liability under the clause such as end-item quantity thresholds and performance dates whichever occurs first.

(4) The dollar ceiling of the value of covered items as well as the Government's contingent liability by fiscal year.

(5) A specific method to establish the price to the Government at which each item would be acquired if this special provision is invoked.

(6) A provision that within 30 days of a Government decision that provides a basis for the contractor to invoke the special provision, the contracting officer shall notify the contractor in writing that the event has occurred and its date of occurrence. Further, the provision shall require that within 90 days after notification by the contracting officer, the contractor must provide to the contracting officer, in writing, a list of the specific investments which he desires to have the Government acquire. This list shall not include any investments which have not been incorporated into the investment clause of the contract prior to the contracting officer's notice to the contractor.

(7) A provision that once the contractor requests the Government to buy any equipment covered by the investment clause, the Government has the right to buy any and/or all other equipment covered by the clause whether the contractor requests it to do so or not.

(8) A provision for deferral of Government acquisition of those items of equipment needed for contract or program completion.

(9) A provision that the investment clause be carried over to successor contracts until the Government's responsibility to acquire the equipment expires.

(10) A provision that a supplemental agreement shall be executed for any equipment acquired by the Government under this special clause.

(11) A provision that as a condition of Government acquisition, the equipment shall be in good operating condition.

(12) Criteria for providing disposition instructions should the special provision for capital investment be exercised. Identify which party is to bear the cost of restoration, storage, disconnect and removal, packing and transportation upon removal of the equipment. The provisions of Section XXIV shall apply unless the contract provides specific exception thereto.

(13) A provision that in the event this special clause is invoked, the limitation stated in 15-205.40 does not prevent acquistion or any payment for the covered equipment.

(14) A provision that this special clause for capital investment shall not apply in the event of contract termination for default.

(15) Provide that this investment clause can be made applicable to subcontracts, if appropriate benefits, as outlined in paragraph (b) above, are available. Provision must be made for Government approval, as outlined in paragraph (c) above, of all equipment for which the Government may assume contingent liability as well as a provision that the clause can be invoked only as a direct flow down from the prime's ability to invoke the clause.

(16) A provision that establishes the extent to which the contractor may use this equipment for other business.

(g) *Administration.*

(1) Approval for use of this investment incentive for contingent liabilities must be obtained from the Secretary of the Military Department or the Director of DLA. Authority up to $50 million may be delegated no lower than the Commander, AFSC, AFLC, NMC, DARCOM.

(2) In the event that it becomes apparent that the contingent liability resulting from the use of this technique will become an actual obligation, the Approval Authority shall be notified and immediate steps shall be taken to obtain sufficient funds to cover the obligation. These funds must be made available at the time the actual obligation materializes, to preclude a violation of the Anti-Deficiency Act.

PROCUREMENT BY NEGOTIATION

PART 9—Make-or-Buy Programs Policies and Procedures

3-901 Scope of Part.

(a) This Part sets forth policies and procedures for obtaining, evaluating, and agreeing to contractors' proposed "make-or-buy" programs. These techniques are required only where the work is complex, the dollar value is substantial, and there is not adequate price competition. The evaluation of and agreement upon a contractor's proposed make-or-buy program shall be accomplished during negotiations to the extent practicable.

(b) Although there is a relationship among the evaluation and agreement upon a contractor's make-or-buy program, the review and approval of procurement systems (see Guide for Conducting Contractor Procurement System Review (CPSR) (ASPS No. 1)), and consent to subcontracts (see Section XXIII), each is a separate and distinct action and the factors to be considered in each vary.

(c) In order to form a basis for contract negotiations, the make-or-buy program (3-902) submitted with the contractor's proposal should (i) sufficiently identify the important segments of the total effort, and (ii) establish the framework for determining the contractor's in-house effort, the subcontract effort, and the plant workload with attendant overhead costs.

3-902 Make-or-Buy Programs.

3-902.1 *General.* The Government buys management from the prime contractor along with goods and services, and places responsibility on him to manage programs to the best of his ability, including placing and administering subcontracts as necessary to assure performance at the lowest overall cost and technical risk to the Government. Although the Government does not expect to participate in every management decision, it may reserve the right to review the the contractor's management efforts, including the proposed make-or-buy program. In reviewing the content of the proposed make-or-buy program effort should be made to have the prime contractor establish any new facility in or near sections of concentrated unemployment or underemployment and in areas of persistent or substantial labor surplus.

3-902.2 *Definition and Criteria.*

(a) A make-or-buy program is that part of a contractor's written plan which identifies the major subsystems, assemblies, subassemblies, and components to be manufactured, developed, or assembled in his own facilities, and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliates, subsidiaries, or divisions.

(b) Regardless of the type of contract contemplated, information with respect to prospective contractors' make-or-buy programs shall be required in all negotiated procurements except:

(i) when a proposed contract has a total estimated value of less than $1,000,000, unless the contracting officer specifically determines that such information is appropriate;

(ii) in research and development contracts, unless the contract is for prototypes or hardware and it can reasonably be anticipated that significant follow-on quantities of the product will be procured;

(iii) when the contracting officer determines that the price is based on adequate price competition, or established catalog or market prices of commercial items sold in substantial quantities to the general public, or on prices set by law or regulation; or

(iv) when the contracting officer determines that the work is not complex.

(c) Information with respect to make-or-buy programs and the program required to be included in any contract (see 3–902.4) shall be confined to items which, because of their complexity, quantity, or cost or because their production requires additional facilities, normally would require company management review of the make-or-buy decision. As a general guideline, the make-or-buy program should not include items or work efforts costing less than 1% of the total estimated contract price or $500,000, whichever is less. Raw materials and off-the-shelf items shall not be included.

3–902.3 *Procedure.*

(a) When submission of information with respect to a prospective contractor's proposed make-or-buy program is required, the solicitation shall so state and shall clearly set forth any special factors to be used in evaluating the program. After considering such factors as capability, capacity, availability of small business and labor surplus area concerns as subcontract sources, the establishment of new facilities in or near sections of concentrated unemployment or underemployment, contract schedules, integration control, proprietary processes, technical superiority or exclusiveness, and technical risks involved, the prospective contractor shall identify in his proposed make-or-buy program that work which he considers he or his affiliates, subsidiaries, or divisions (i) must perform as "must make," (ii) must subcontract as "must buy," and (iii) can either perform or acquire by subcontract as "can make or buy." The prospective contractor shall state the reasons for his recommendations of "must make" or "must buy" in sufficient detail for the contracting officer to determine that sound business and technical judgment has been applied to each major element of the program. When the make-or-buy program is to be incorporated into the contract and the design status of the article being procured does not permit accurate precontract identification of major items that should be included in the make-or-buy program, the prospective contractor shall be notified that such items must be added to the program, when identifiable, under the "*Changes to Make-or-Buy Program*" clause (7–204.20(a)). The prospective contractor shall be required to include in the information furnished with respect to his proposed make-or-buy program:

(i) a description by which each major item can be identified;

(ii) a recommendation to make or to buy each such item or defer the decision;

(iii) a recommendation as to make-or-buy for any "can make or buy" item;

(iv) the proposed subcontractors, if known, including location and size classification;

(v) designation of the plants or divisions in which the contractor proposes to make the item, whether the facility is in or near section of concentrated unemployment or underemployment; and

(vi) sufficient information to permit the contracting officer to evaluate the proposed program in accordance with (b) below.

Proposed make-or-buy programs shall be evaluated and negotiated as soon as practical after receipt of the contractors' proposals and in any event prior to award or definitization of unpriced actions.

(b) In reviewing and evaluating a proposed make-or-buy program, the contracting officer shall assure that all appropriate items are included and shall delete items which should not be included. In conducting his review, the contracting officer shall obtain the advice of appropriate personnel including technical and program management personnel as well as small business and labor surplus area specialists, whose knowledge would contribute to the adequacy of the review. During such review primary consideration shall be given to the effect of the contractor's proposed make-or-buy program on technical, manufacturing or financial risk involved, price, quality, delivery, performance, and contemplated type of subcontract. The contractor has the basic responsibility for make-or-buy decisions. The contractor's recommendations shall therefore be accepted unless they adversely affect the Government's interests or are inconsistent with Government policy. The evaluation of "must make" and "must buy" items should normally be confined to that necessary to assure that the items are properly categorized. The effect of the following factors on the interests of the Government shall also be considered:

(i) whether the contractor has justified the performance of work in plant which differs significantly from his operations;

(ii) the consequence of the contractor's projected plant work loading with respect to overhead costs;

(iii) the contractor's consideration of the competence, ability, experience, and capacity available in other firms, especially small business and labor surplus area concerns (this is particularly significant if the contractor proposes to request additional Government facilities in order to perform in-plant work);

(iv) the contractor's make-or-buy history as to the type of item concerned;

(v) whether small business and labor surplus area concerns will be able to compete for subcontracts;

(vi) other elements, such as the nature of the items, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and materials; and

(vii) the scope of the proposed subcontract or, as a minimum, the type and level of technical effort intended for inclusion in the subcontract.

(c) Proposed "make" items normally shall not be agreed to when the products or services under consideration:

(i) are not regularly manufactured or provided by the contractor, and are available—quality, quantity, delivery, and other essential factors considered—from any other firm at prices no higher than if the contractor should make or provide the products or services; or

(ii) are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from any other firm at lower prices.

Such items may be agreed to, however, if the contracting officer determines that the overall cost of the contract or of the program to the Government would be increased if the item were bought.

(d) Before agreeing to a "make-or-buy" program to be incorporated into the contract (or, when the program is included in a contract, consenting to a change therein), the contracting officer shall invite the advice and counsel of the activity's small business and labor surplus area specialist by permitting him to review all pertinent facts and make recommendations thereon. The proposed program shall also be made available to the SBA representative for his review and recommendations. Reviews by the small business and labor surplus area specialist and the SBA representative should be scheduled to support the negotiations to be conducted by the contracting officer.

3-902.4 *Incorporation of the Make-or-Buy Program in Contracts.*

(a) When information with respect to a make-or-buy program has been required to be submitted in accordance with the foregoing, the make-or-buy program, as approved by the contracting officer, may be included in any negotiated contract for major system acquisition (as defined in 1-201.41) or subsystem or component thereof, and otherwise shall be included only in cost-reimbursement contracts except:

(i) cost-sharing contracts where the contractor's share is 25% or more;

(ii) cost-plus-incentive-fee contracts having a cost incentive which provides for a swing from target fee of at least 03% and a contractor's overall share of cost of at least 10% (authority may be requested (see 1-109) to exclude the make-or-buy program from other cost-plus-incentive-fee contracts having different incentive and cost-sharing patterns, whenever the contracting officer finds that such other contracts provide sufficient incentive for control of costs); and

(iii) cost-plus-incentive-fee contracts to which 3-902.5 is applicable.

(b) The clause in 7-204.20(a) shall be incorporated in all contracts in which a make-or-buy program has been included.

3-902.5 *Price Adjustments.*

(a) The following subparagraphs apply only to fixed-price incentive and cost-plus-incentive-fee contracts.

(b) There may be cases where it is proper to agree that an item of significant value will be "bought" even though it would usually be more economical to have it "made," or vice versa. For instance, the contractor may have a unique capability for low-cost manufacture of a substantial component but his capacity may be full during the period necessary for contract performance, so the component must be subcontracted. In such cases it will be necessary that the "make-or-buy" program as approved by the contracting officer specifically call for what would usually be the more costly treatment of the item. In that event the consequent higher costs may be explicitly recognized in establishing the best obtainable contract or target price. Unforeseen changes in the circumstances may arise during contract performance, however, which induce the contractor to propose changing the item from "buy" to "make" (or vice versa). If such a change is made, the element of the contract price which was intended to compensate the contractor for the higher costs flowing from the initial make-or-buy decision would instead constitute windfall profits to the contractor and unwarranted costs to the Government.

(c) When, during the review of the prospective contractor's "make-or-buy" program (see 3–902.3), a situation of the kind described in (b) above is found to exist, the clause in 7–204.20(b) shall be included in the contract, and any "make-or-buy" items of the kind described in (b) above shall be specifically designated in the Schedule (or elsewhere in the contract) as being either a "make" item or a "buy" item, and as being subject to this clause. The make-or-buy program itself and the clause in 7–204.20(a) shall not be included in the contract.

Part 10—Contractor's Weighted Average Share in Cost Risk (CWAS)

3-1000 Scope of Part. This Part sets forth the concepts and objectives which govern the Contractor's Weighted Average Share in Cost Risk (CWAS) technique. It also sets forth detailed procedures for determining the CWAS qualification.

3-1001 General Concept. CWAS is a technique for determining and expressing numerically the degree of cost risk a contractor has assumed, based on the percentage that commercial and firm fixed-price competitive Government work is to total work for a given calendar year. The technique recognizes that contractors who conduct business in a predominantly price competitive environment can be relied upon to control or reduce costs of their products with only minimal DoD surveillance of their systems. The CWAS concept is not intended to obviate consideration of such issues as allocability, consistency with generally accepted accounting principles, or exclusions which are not based on standards of reasonableness.

3-1002 Objectives. The objectives of the CWAS program are:

(i) to furnish a measure of an individual contractor's risk motivation, to conduct business prudently and with maximum economy;

(ii) to offer additional inducement to a contractor to accept higher risk type contracts;

(iii) to minimize the extent of Government control, including controls exercised through DoD prime contracts and subcontracts thereunder, thereby reducing Government costs;

(iv) to provide a simple, uniform procedure for determining a contractor's assumption of cost risk that can be applied equitably to all defense contractors who desire to participate by voluntarily submitting pertinent data;

(v) to provide a means for directing audit and other DoD management efforts to those areas where they are most needed because of the greater degree of Government risk; and

(vi) to provide a basis for making determinations as to reasonableness of specified indirect costs and relaxation of specific administrative controls. (See 15-201.3, 23-101, and 3-809(c)(4).)

3-1003 Definitions.

3-1003.1 *Costs Incurred.*

(a) For purposes of this Part, costs incurred consist of the contractor's total cost input for its previous calendar year identified through the use of the contractor's method of accounting and reporting.

Costs incurred represent all costs (whether or not allowable), including costs of direct labor, direct material, subcontracts, and direct services as well as all properly allocated overhead (indirect) costs, except as provided in (c) below.

(b) The contractor's total cost input for the calendar year will be categorized by commercial and firm fixed-price competitive Government business versus total business. The categorizing of costs will be in accordance with the accounting system and procedures used by the contractor in assigning costs to contracts and commercial business *providing*, in the case of Government contracts, this system and these procedures are acceptable to the Government for contract cost determination and pricing purposes.

(c) With respect to a contractor's production for stock, *i.e.*, finished goods or finished parts not manufactured against specific commercial or Government orders in hand, the treatment to be accorded the costs incurred shall be determined on a practical case-by-case basis. Since the concept is aimed at general orders of magnitude, emphasis in arriving at solutions to individual cases should be on practicality rather than precision. For example, if production for stock consists essentially of only standard items to be sold at a fixed or catalog price on the commercial market or to the Government on the same basis in accordance with 15-205.22(e) or 3-807, the costs incurred shall be reported in the commercial or firm fixed-price competitive Government category. On the other hand, if production for stock involves largely items which are not sold generally on the commercial market as end items (i.e., nonstandard items), but which are incorporated as components under a variety of contracts, the costs incurred shall be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders. In those situations where production for stock is more evenly composed of standard and nonstandard items and the treatment to be accorded such production will have a significant effect upon the ultimate CWAS rating assigned to the contractor, the mix of standard and nonstandard items should be determined with a fair amount of precision, so that the costs incurred with respect to the standard items can be reported in the commercial or firm fixed-price competitive Government category and the costs associated with the nonstandard items can be excluded. Any method developed regarding the treatment to be accorded costs applicable to items produced for stock shall be provided safeguards to prevent duplicate inclusion of such costs.

(d) Costs incurred which are applicable to raw materials not purchased against specific commercial or Government orders in hand will be excluded until such time as they are chargeable to and can be identified with specific commercial or Government orders.

3-1003.2 *Profit Center.* A profit center is the smallest organizationally independent segment of a company which has been charged by management with profit and loss responsibilities.

3-1004 Procedures for Determining CWAS Qualification.

(a) CWAS is applicable to all contractors of the DoD on a voluntary basis. A contractor desiring to participate may submit the required cost incurred data used to determine its weighted average share in risk, showing the mix of commercial and firm fixed-price competitive Government business as a percentage of total business. If a company has only one profit center, the data shall be developed on a company-wide basis. If a company has more than one profit center which it desires to qualify for CWAS, it shall develop data on a company-wide basis and for each such profit center. Any change in an accepted basis for computing CWAS qualification must be based on a demonstrable organizational change or on an acceptable change to the accounting structure.

(b) In those cases where contractors use a standard cost system of accounting, they may elect to substitute cost of sales in lieu of costs incurred for purposes of CWAS measurement.

(c) Contractors who desire to have their CWAS rating computed on the sales basis, rather than on the costs incurred or cost of sales basis, shall first receive authorization in writing from the ACO. To obtain such authorization, the contractor shall submit a request to use the sales basis, in writing to the ACO, with a copy to the DCAA auditor, by 1 March. The request shall be supported by data and rationale which in the contractor's opinion demonstrates that substantially the same results would be achieved under either the cost incurred or sales basis. The ACO, with the advice of the DCAA auditor, will either authorize or disapprove the contractor's request by 1 April. Once the sales basis has been authorized, the authorization shall remain in effect until such time as circumstances change and in the opinion of the ACO substantially the same results would no longer be achieved. In the case of those contractors who have received authorization from the Government to use the sales basis, the term "costs incurred" as applied to the computation of the CWAS rating in other paragraphs of this Section III, Part 10, will be construed to mean "sales."

Use of the sales method is encouraged, where appropriate, in order to permit more timely submission and to reduce the Government's administrative and audit review workload in determining the contractor's CWAS qualification.

(d) In order to establish an initial CWAS qualification, the contractor shall submit an application computed on its costs incurred during the previous calendar year. This application (original and two copies) must be received by the ACO before 1 May of the year following the calendar year in which the costs were incurred. A copy should also be submitted to the cognizant DCAA auditor. If not received by 1 May, the contractor shall wait until the end of the calendar year to submit an application. Contractors who qualify for CWAS with a rating of 75% or more will be notified that:

- (i) application of cost reasonableness determinations based on CWAS will commence with the contractor's fiscal year in which 1 January of the year following the year used as the CWAS base falls (see 15-201.3(b)); and
- (ii) specified administrative controls will be relaxed from the date the ACO notifies the contractor that it is CwAS qualified (see 23-101 and 3-809).

(e) Once the contractor has been qualified with a CWAS rating of 75% or more, the contractor shall continue to be CWAS qualified until such time as it is subsequently found not to be qualified and is so notified in writing by the ACO. If the ACO, as a result of periodic reviews of the contractor's government and commercial mix of business, observes a substantial change in commercial or firm fixed-price competitive Government work, the ACO shall request the contractor to submit a new CWAS application in writing, by 1 March, based on costs incurred for the prior calendar year. If the contractor does not submit the new application within 60 days of the request, the ACO shall advise the contractor in writing that it is no longer CWAS qualified and that CWAS will not apply to determinations of reasonableness of indirect costs for the fiscal year in which the contractor was operating as of the prior 1 January.

(f) The contractor's CWAS qualification will be determined by the ACO as follows:

- (i) For the calendar year just ended, determine the total dollar costs incurred for commercial work and firm fixed-price competitive Government contracts; and

(ii) Divide the result by total costs incurred for all business. The resulting percentage is the contractor's CWAS rating.

(g) In computing the CWAS rating, the following will be observed:

(i) Government contracts will include only U.S. Government contracts and Foreign Military Sales.

(ii) Direct foreign sales, commercial or military, will be considered the same as commercial sales.

(iii) Fixed-price Government contracts and fixed-price subcontracts under Government contracts with economic price adjustment provisions awarded on the basis of price competition will be considered the same as firm fixed-price competitive Government contracts.

(iv) A firm fixed-price Government contract or subcontract under a Government contract is competitive for CWAS calculation purposes if it is $1 million or less, or is:

  (A) advertised, including two-step formal advertising and small business restricted advertising;

  (B) price competitive negotiated, including set-asides; or

  (C) based on catalog or market prices when a DD Form 633-7 has been accepted as adequate for exemption from cost or pricing data, or prices set by law or regulation (3-807.7).

3-1005 Determination and Verification.

(a) The ACO is responsible for determining the CWAS qualification. Within 30 days after receipt of the contractor's request, the DCAA auditor shall submit a report to the ACO on the validity of the data and the computation techniques. The ACO will promptly validate the contractor's CWAS rating and advise the contractor whether a CWAS qualification is granted. If the ACO has not advised the contractor to the contrary within 60 days from receipt of the contractor's request, the proposed CWAS qualification will be considered granted. In lieu of validation by DCAA, the data relative to commercial work and firm fixed-price competitive Government contracts and subcontracts (or in the alternative as agreed upon with the ACO, the total CWAS proposal) will be accepted on the basis of a report thereon by an independent public accountant, to the effect that the data involved is stated in accordance with the procedures and requirements set forth in this Part.

(b) The CWAS qualification may be withdrawn pursuant to a finding by the ACO of fraud, misrepresentation, or other abuse. Such action may be taken with respect to a profit center or centers or the entire corporation.

(c) Reinstatement of a CWAS qualification may be accomplished only after the contractor has satisfactorily corrected the condition leading to withdrawal. Before reinstatement, the contractor must submit a complete statement of corrective actions to the ACO for determination. The contractor shall then reapply for a CWAS qualification in accordance with 3-1004.

(d) The Head of a Contracting Activity having contract management cognizance may deny or revoke a CWAS qualification in exceptional cases when, in his (her) judgment, because of the special nature of the contractor's work, competitive position, future or follow-on contracts, known procedures or other unusual circumstances, the contractor's CWAS qualification does not provide assurance that Government cost audit and controls are not needed in the Government's interest.

3-1006 Maintenance of Records. Each DCASR shall maintain a current central register of CWAS qualifications granted or withdrawn for contractors subject to ACO cognizance by that Region. Copies of all qualifications granted, withdrawn, or reinstated by regional ACO's will also be forwarded to Headquarters, Defense Logistics Agency, Attn: DLA-AFS, where a master register will be maintained. Similarly, ACO's assigned under the National Plant Cognizance Program will forward copies of all CWAS qualifications granted, withdrawn, or reinstated for their contractors to Headquarters, Defense Logistics AGency, Attn: DLA-AFS, for integration into the master register. This master register is maintained for benefit of contracting officers, auditors, and other DoD personnel who may require CWAS qualification information.

[The next page is 3:173.)

Part 11–Acquisition of Automatic Data Processing Equipment

3–1100 Contractor Acquisition of Automatic Data Processing Equipment (ADPE).

3–1100.1 *General.*

(a) This paragraph 3–1100 is applicable to all ADPE, as defined in 4-1102.1, except as components of end items to be delivered to the Government.

(b) If ADPE is purchased for the account of the Government or if title to the ADPE will pass to the Government, the acquisition must be approved as required by Section XIII.

3–1100.2 *Review of Decision To Lease.*

(a) If the total cost of leasing the ADPE is to be allocated to one or more Government contracts requiring the negotiation or determination of costs, the contracting officer shall, prior to approval of the proposed lease agreement:

(i) require the contractor to submit a request for leasing ADPE in writing. Such request shall be in accordance with 3–1100.3;

(ii) survey the Defense Supply Agency (DSAH-LSR) for availability of excess ADPE which could be issued as GFP (see 13–301) and which would fulfill the contractor's requirements (including timely availability and technical compatibility);

(iii) determine whether, under 15–205.48, leasing is the appropriate method of acquisition from the Government's standpoint;

(iv) consider whether the ADPE should be leased under a Federal Supply Schedule Contract (see Section V, Part 9);

(v) if the rental of ADPE through a commercial contract is authorized, require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase or other benefits earned through rental payments; and

(vi) obtain approval of the ADPE leasing arrangement as provided by 4-1104.13(a)(2).

(b) If the total cost of leasing ADPE in a single plant, division, or cost center exceeds $500,000 per year and 50 percent or more of the total cost is to be allocated to Government contracts requiring the negotiation or determination of costs, the administrative contracting officer should arrange for:

(i) an initial review and an annual review thereafter of the contractor's ADPE system for the purpose of evaluating, under 15–205.48, his existing ADPE capability and the need to continue leasing, irrespective of whether the term of the lease was renewed or otherwise extended by the contractor (see 3-1100.3 for documentation required; and

(ii) submission by the contractor to the ACO of any proposed lease of a new ADPE system and any proposed major changes to an existing system, for advance determination of the validity of the stated requirement and the reasonableness of leasing and resulting cost. (See 3-1100.3 for documentation required.)

(A "*major change*" is any addition or substitution of ADPE which will have an annual cost in excess of $50,000.) After the initial review and after each annual review, and also after review of any proposed lease of a new ADPE system or major change, the ACO should either enter into an advance understanding with the contractor pursuant to 15-107, to provide a basis for concurrence in the proposed lease, or in the alternative notify the contractor of the Government's nonconcurrence and of consequent cost disallowance contemplated under 15-205.48. The Government shall approve or disapprove submissions of contractor data in a timely manner.

(c) In implementing the above, technical ADP assistance will be provided as necessary to the contracting officer by the Department having the preponderance of interest with the contractor.

3-1100.3 *Contractor Documentation for ADPE Acquisition.*

The documentation specified by this section is required only when the total cost of leasing is to be reimbursed under one or more Government contracts or the total annual cost of leasing exceeds $500,000 and 50 percent or more is charged to Government contracts. The documentation is acceptable in the same format used by the contractor to make ADPE decisions. When the documentation has previously been submitted to DCAA, a copy of that submission may be used or, if it is voluminous, reference to the submission is acceptable. Documentation previously submitted does not have to be resubmitted; only updated as necessary. The contractor's request for approval of a proposed lease agreement or to justify his leasing decisions under 15-205.48(d)(3) shall, as a minimum, consist of the following supporting data, prepared prior to acquisition.

(1) Inventory and analysis of utilization of existing installed ADPE:

a. List each computer component by manufacturer, type, and model number.

b. Give location of ADP system.

c. Furnish acceptance date(s) by component.

d. Give type of ownership, i.e., leased, purchased, Government-furnished, lease back.

e. Furnish operational use by component for the past 12 calendar months. Also show nonproductive use separated into categories: preventive maintenance and remedial maintenance for the Central Processing Unit components which affect the ADPE system for the same period.

f. Identify and describe each data system supported; indicate computer time for each system and the related contract(s) or task(s) involved.

g. Identify any ADPE system which has been acquired (leased) to comply with a contract requirement. The contract number, clause identification and extract of wording requiring a specially configured or specific computer shall be available for Government review.

(2) Documentation supporting and justifying need for and benefits to be derived from new ADPE systems or major change(s) to existing systems.

a. Furnish advance planning documentation covering useful life of these systems. This documentation shall provide information to support useful life decisions and also provide a basis for entering into advance understandings as provided at 15-107.

b. List specific objectives or requirements (generally in the form of a data systems specification). If ADPE specifications were not developed independently of a particular vendor's product line, explain why.

c. At the option of the Government, functional block diagrams of the present and proposed configurations may be required.

d. Briefly describe the major applications to be processed by ADPE and appropriate background information to explain need.

e. If applicable, list or summarize projects by short title and Research and Development (R&D) project number.

f. Indicate estimated monthly main frame use hours for each major application or project for the expected ADPE retention period.

(3) Equipment Selection - Competitive.

a. Show names and addresses of sources solicited and indicate those submitting proposals.

b. Indicate which proposals were not acceptable and explain why.

c. Show cost comparisons for lease, lease with option to purchase, and purchase, for all acceptable proposals.

d. Indicate which proposal was selected and explain selection criteria used.

e. Attach a copy of the request for proposals, one copy of each acceptable proposal, and one copy of the evaluation and selection report. When proposals are voluminous, a summary may be submitted to the Government. Actual proposals will be kept on file and made available to the Government.

f. State whether the selected ADPE will provide the lowest overall cost to the Government. If not, explain the rationale for its selection over the ADPE which would have provided the least cost.

(4) Equipment Selection - Noncompetitive. Show the equipment selection. Include alternatives considered. Show the equipment configuration selected including manufacturer, type and model number of each component, feature, and device; indicate the monthly rental cost (including extra shift), purchase price, and monthly maintenance costs.

(5) Cost. State approximately the resulting increase or decrease in monthly costs to the Government.

(6) Lease Versus Purchase Analysis.

a. Provide a lease / purchase analysis by component for the selected ADPE. A suggested format for this analysis is shown on the following page.

b. The use of a realistic Useful Life and Residual Value for each component is critical to this analysis. Documentation must be submitted to support the Useful Life pursuant to paragraph 15-205.48(c)(1).

SUGGESTED PURCHASE/LEASE ANALYSIS FORMAT

ADP System
As of
Date

								(7-8)			(9-11 or 10-11)		(12+13)	(4x6)	(15-14)
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
ADPE Components	Qty.	Vendor	Avg. Monthly Rental/Lease (A) (B)	Instal. Date	Useful Life (C)	Orig. Purchase Price	Equity (D)	Current Purchase Price	Other Vendors Purchase Price	Residual Value (E)	Owner Depreciation Costs	Other Costs (F)	Total Owner Costs	Total Rental/Lease Costs (G)	Differential (H)

(A) Includes projected extra shift where necessary.
(B) Includes other costs (taxes, maintenance, insurance, etc.)
(C) Documentation must be provided and attached per ASPR 3-1100.3 or 15-205.48, as applicable.
(D) Accrued equity on rented/leased equipment (accumulated rental credits).
(E) Residual value forecast at end of useful life.
(F) Includes taxes, maintenance, insurance, selling costs, lease cancellation costs, etc.
(G) When considering annual justification for retention of existing ADPE capacity and the need to continue leasing, only the remaining rental costs to be paid under the lease should be shown.
(H) If lease is favorable, bracket differential figures.

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PROCUREMENT BY NEGOTIATION

Part 12—Cost Accounting Standards

3-1200 Cost Accounting Standards.

3-1201 General. Public Law 91-379, 50 U.S.C. App. 2168, as implemented by the Cost Accounting Standards Board (see Appendix 0) requires the development of Cost Accounting Standards to be used in connection with negotiated national defense contracts and disclosure of cost accounting practices to be used in such contracts.

3-1202 Definitions. When used in this Part, the words and terms defined in Appendix 0 shall have the meanings set forth therein. In addition, the words and terms defined in this paragraph shall have the meanings set forth below:

(i) "*Net awards*" means the obligated value of negotiated national defense prime contracts, awarded in the reporting period, minus cancellations, terminations, and other credit transactions relating thereto.

(ii) "*Company*" includes all divisions, subsidiaries, and affiliates of the contractor under common control.

(iii) "Small business concern" is any concern, firm, person, corporation, partnership, cooperative or other business enterprise which pursuant to paragraph 331.20(k) of Appendix O and the rules and regulations of the Small Business Administration set forth in Part 121 of Title 13 of the Code of Federal Regulations, is determined, to be a small business concern for the purpose of Government procurement (see 1-701.1).

(iv) "CAS-covered contract" is any negotiated contract or subcontract which pursuant to the requirements of the Cost Accounting Standards Board or agency regulations includes a cost accounting standards clause (see 7-104.83(a)(1) or (2).

3-1203 Prime Contractor Disclosure Statement(s).

(a) Solicitation Notice. The notice entitled Disclosure Statement-- Cost Accounting Practices and Certification in 7-2003.67(a) shall be inserted in all solicitations which are likely to result in a negotiated contract exceeding $100,000, except when the price is (i) based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or (ii) set by law or regulation. The notices shall not be included in: solicitations limited to small business concerns; solicitations limited to educational institutions subject to the cost principles in Section XV, Part 3 (except that the notice shall be inserted in solicitations sent to federally funded research and development centers operated by an educational institution); solicitations limited to a foreign government or an agency or instrumentality of such government; or solicitations which will result in contracts executed and performed in their entirety outside the United States, its territories or possessions.

(b) Pre-Award Submission of Disclosure Statement(s). Each offeror submitting an offer which could result in a CAS-covered contract shall furnish copies of his Disclosure Statement(s) to the offices listed in paragraph (c) below concurrently with the submission of his proposal to the PCO except when the offeror has executed the Certificate of Monetary Exemption, Certificate of Interim Exemption or the Certificate of Previously Submitted Disclosure Statement (see 7-2003.67(a)). More than one Disclosure Statement may be required in connection with the award of a contract (see paragraph 351.40(a) of Appendix O). Award of a contract shall not be made until a determination has been made by the cognizant ACO that a Disclosure Statement is adequate (see 3-1205(b)) unless, in order to protect the interests of the Government, the PCO waives this requirement. In this event, a determination shall be made as soon after award as possible.

(c) *Distribution of Disclosure Statement(s).* The offeror shall distribute this Disclosure Statement(s) as follows:

(i) original and one copy to the cognizant Administration Office (Attn: ACO) (see DoD Directory of Contract Administration Components, DoD 4105.59H) unless otherwise specified in accordance with 3-1208(c).
(ii) one copy to the cognizant contract auditor; and
(iii) one copy to the Cost Accounting Standards Board, 441 G Street, N.W., Washington, D.C. 20548, within 10 days after the determination of adequacy pursuant to 3-1205(b).

(d) *Post-Award Submission of Disclosure Statement(s).* Post-award submission of Disclosure Statement(s) may be authorized only when the PCO has made a written determination that such authorization is essential (i) to the national defense, (ii) because of the public exigency, or (iii) to avoid undue hardship. Each determination shall set forth facts which clearly support the determination to authorize post-award submission, and a copy of the determination shall be included in the contract file. Authorization issued pursuant to this paragraph shall specify the period of time, not to exceed 90 days after contract award, within which diclosure must be made.

(e) Determination of Secretary That It is Impractical to Secure Disclosure Statement(s). If the cognizant Assistant Secretary for a Military Department or the Director for the

Defense Logistics Agency, the Defense Communications Agency, the Defense Nuclear Agency, or the Defense Mapping Agency determines that it is impractical to secure the Disclosure Statement(s) in accordance with the clause(s) in 7-104.83(a) and this Part, he may authorize award of such contract without obtaining such Statement(s). This authority shall not be delegated. He shall, within 30 days thereafter, submit a report to the Cost Accounting Standard Board, setting forth all material facts.

(f) Privileged and Confidential Information in Disclosure Statement(s). If the offeror or contractor notifies the contracting officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement will be protected and will not be released outside the Government (see paragraph (a)(1) of the Cost Accounting Standards clause in 7-104.83(a)(1) or paragraph (a)(2) of the Disclosure and Consistency of Cost Accounting Practices clause in 7-104.83(a)(2).

(g) *Amendment of Disclosure Statements.* Amendments of a Disclosure Statement after contract award shall be processed in accordance with paragraph 351.120 of Appendix O, 3-1205(d), and 3-1207. Normally, the ACO should require resubmission of a complete, updated Disclosure Statement pursuant to paragraph 351.120 of Appendix O only when the number of amended pages or the nature of the amendments are so extensive that the review process would be substantially expedited as a result of the resubmission.

(h) Responsibility to Maintain Accuracy of Disclosure Statement(s). The contractor or subcontractor who has contracts containing either the Cost Accounting Standards clause or the Disclosure and the Consistency of Cost Accounting Practices clause (7-104.83(a)(1) or (2) has a responsibility to maintain an accurate Disclosure Statement(s) and comply with those disclosed practices if:

(i) he was awarded a negotiated national defense contract in his current cost accounting period of $10,000,000 or more, or

(ii) he is, or is a part of, a company which, together with its subsidiaries, received net awards of negotiated national defense prime contracts and subcontracts subject to cost accounting standards totaling more than $10,000,000 in his most recent completed cost accounting period.

Should his obligation to maintain the Disclosure Statement cease because he no longer meets or exceeds the financial

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thresholds, he will be required to follow consistently the disclosed practices for those contracts awarded during a period in which he was obligated to submit a Disclosure Statement(s). A change to such practices may be proposed by either the contractor or the Government and negotiated by the contractor and his CAS cognizant ACO.

3-1204 Contract Clauses.

3-1204.1 Prime Contracts and Solicitations.

(a) The clauses in 7-104.83(a)(1) and (b) shall be inserted in all negotiated solicitations and contracts exceeding $100,000, except the following:

- (i) when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public, or is set by law or regulations. Catalog or market price exemption is determined to exist even though the award is made on the basis of adequate competition. It is the offeror's responsibility to request and to provide justification for a catalog or market price exemption. In providing such justification, the offeror shall (A) indicate in his proposal, and in any changes in his offered price, that the proposed price is based on an established catalog or market price of a commercial item sold in substantial quantities to the general public, rather than derived from the stimulus of competition which may be present in the particular procurement; and (B) complete and submit a DD Form 633-7 or otherwise furnish the necessary information in accordance with 3-807.7(b) However, the procuring activity must make a determination whether or not the exemption applies in each case;
- (ii) contracts awarded to an offeror who has certified he is a small business concern pursuant to 1-702(d);
- (iii) contracts awarded to an educational institution subject to cost principles in Section XV, Part 3, except for contracts to be performed by a federally funded research and development center operated by such an institution;
- (iv) contracts with contractors who are eligible for and have elected to use modified contract coverage under Part 332 of Appendix O (see (b) below);
- (v) contracts which are executed and performed in their entirety outside the United States, its territories and possessions;

(vi) contracts with a foreign government or an agency or instrumentality of such government; and

(vii) contracts for which the Cost Accounting Standards Board has approved other waivers of exemptions pursuant to 331.30 of Appendix O.

(A) The Cost Accounting Standards Board has provided for the exemption of contracts of $500,000 or less under certain circumstances. Paragraph 331.30(b)(8) of Appendix O prescribes the circumstances under which such an exemption is applicable. In order to effectively administer the requirements of that paragraph, the solicitation notice 7-2003.67(b) shall be inserted in all solicitations requiring the inclusion of the solicitation notice in 7-2003.67(a).

(B) Contracts and subcontracts with foreign concerns are exempt from the requirements of Cost Accounting Standard 403 and all subsequent standards. This exemption does not relieve foreign concerns of any obligation to comply with CAS 401, CAS 402 or disclosure requirements.

(b) With respect to (a)(iv) and vii) above, the clauses in 7-104.83(a)(2) and (b) shall be inserted in--

(i) all negotiated solicitations which are likely to result in a negotiated contract exceeding $100,000, unless otherwise exempt in accordance with 3-1204.1 (a),

(ii) all such contracts with a foreign concern, and

(iii) all such contracts exceeding $100,000 but under $10,000,000 when the offeror certifies he is eligible for and elects to use modified contract coverage under provisions of Part 332 of Appendix O (see (a)(iv) above).

In order to effectively administer the exemption in (iii) above, the solicitation notice in 7-2003.67(c) shall be inserted in all solicitations requring the inclusion of the solicitation notice in 7-2003.67(a).

(c) When a contract contains the Administration of Cost Accounting Standards clause (7-104.83(b)), there is a requirement that a flow of information relative to CAS-covered subcontract(s) awarded under a CAS-covered prime contract be transmitted from the contractor placing the CAS-covered subcontract, at whatever tier, to his Cost Accounting Standards cognizant ACO and, subsequently, through Government channels, to the ACO cognizant of the subcontractor receiving the order. When the ACO is advised by the contractor of such an award, he will forward, within 10 days, the information required of the contractor in 7-104.83(b)(e) to the contract administration office (CAO) having Cost Accounting Standards cognizance. (See 3-1208.)

3-1204.2 Subcontracts.

(a) The clauses in 7-104.83 require contractors and subcontractors to flow down the requirement to comply with Cost Accounting Standards in effect on the date of final agreement on price, as shown on the subcontractor's signed certificate of current cost or pricing data, or date of award, whichever is earlier, unless the subcontractor is exempt from CAS requirements or the subcontractor qualifies for and elects to comply with the modified contract coverage clause.

(b) When a subcontractor accepts a CAS-covered subcontract he is responsible for providing to the higher tier contractor the information specified in 7-104.83(b)(e). The higher tier contractor will follow the procedure set forth in 3-1204.1(c) in transmitting the information through Government channels to the ACO cognizant of the subcontractor facility.

3-1205 Review of Prime Contractor Disclosure Statements and Changed Practices.

(a) ACO and Auditor Support Responsibility. When DOD has contract administration cognizance of a contractor, required Disclosure Statements will be reviewed by the cognizant ACO and auditor for all Government agencies including, but not limited to DOD, NASA, DOE, and GSA.

(b) Determination of Adequacy. The cognizant contract auditor shall perform an initial review of a Disclosure Statement to ascertain whether it adequately describes the offeror's cost accounting practices. In order to be deemed adequate, the Disclosure Statement must be current, accurate, and complete. Upon completion of this initial review the results shall be reported to the ACO. When the ACO determines that adequate disclosure has not been made, he shall identify the areas of inadequacy and request a revised Statement and so advise the auditor and PCO. When the ACO determines that the Disclosure Statement is adequate, he shall notify the offeror in writing with a copy to the auditor and the PCO. Notification of adequacy or inadequacy shall normally be made within 30 days after receipt of a Disclosure Statement by the ACO. In addition, the notice shall state that a disclosed practice shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed to practice for pricing proposals or accumulating and reporting contract performance cost data. The contract may be awarded when it is determined that an adequate disclosure has been made (see 3-1203(b)).

(c) *Determination of Compliance.* Subsequent to the issuance of the above notification, a more detailed review of the Disclosure Statement shall be made by the auditor to ascertain whether the disclosed practices are in compliance with Cost Accounting Standards and, for DoD procurements, with Section XV; the auditor shall advise the ACO of his findings. The ACO shall take action regarding noncompliance with Cost Accounting Standards in accordance with 3-1212. A revised Disclosure Statement may be required. In addition, adjustment of the prime contract price or cost allowance in accordance with 3-1207(b) may be required. Noncompliance with Section XV shall be processed separately in accordance with normal administrative practices.

(d) *Review of Changed Practices.*

(1) When a change to disclosed practices is proposed or required, a description of the changed practices shall be distributed in accordance with 3-1203(c). The cognizant contract auditor shall review the changed practices for adequacy and compliance (as defined in (b) and (c) above) concurrently. Upon completion of the review, the results shall be reported to the ACO. When the ACO determines that the changed practices are adequate and in compliance, he shall so notify the contractor with a copy to the auditor.

(2) When the ACO determines that the description of the changed practices is not adequate, or the changed practices are not in compliance, he shall identify the deficiencies and so notify the contractor with a copy to the auditor. This notice shall require the contractor to advise the ACO and the auditor of the corrective action that has been taken or is to be taken. Resubmission of the changed practices will be required. In the event the contractor has submitted an adequate description of the changed practices but these practices are determined to be in noncompliance and the contractor does not agree, the ACO shall issue an adequacy determination with the stipulation that if those changed practices are implemented for the purpose of pricing or costing Government contracts, the contractor shall be considered in noncompliance and the ACO shall take action in accordance with 3-1212.

(3) When a change to established (nondisclosed) practices is proposed or required, it shall be processed in accordance with (1) and (2) above except that no submission is required to be made to the Cost Accounting Standards Board.

3-1206 Administration of CAS Requirements on Subcontracts.

(a) In conformance with the policy set forth in 20-704(b) the prime contractor or higher tier subcontractor is responsible for administering the CAS requirements contained in the subcontracts awarded. However, in recognition of the protections provided to subcontractors by the CAS clause, subcontractor CAS reviews will often be performed by the Government.

(1) If the subcontractor has previously furnished a Disclosure Statement to a Government ACO, the subcontractor may satisfy the requirement for submission by identifying to the prime contractor or higher tier subcontractor the ACO to whom it was submitted.

(2) If the subcontractor considers his Disclosure Statement to contain privileged or confidential information, he may submit the statement directly to his cognizant ACO and auditor and notify the prime contractor or higher tier subcontractor as provided in (1) above. In such cases a pre-award determination of adequacy is not required. Instead, the ACO cognizant of the subcontractor shall notify the contract auditor that the review for adequacy as well as compliance will be performed during the post-award review conducted to ensure that the subcontractor has complied with his disclosed practices, CAS, and Section XV cost principles. After adequacy review, the ACO cognizant of the subcontractor shall notify the subcontractor of the findings of the Government. The findings shall, in turn, be forwarded to the prime contractor.

(3) In many cases a subcontractor will not be subject to the Disclosure Statement requirement. Yet the same protections against revealing confidential or proprietary data accrue to these subcontractors. Such subcontractors may claim in writing to their prime contractors or higher tier subcontractors, that such reviews by prime contractors or higher tier subcontractors would jeopardize their competitive position or that proprietary data are involved. In these cases, the ACO cognizant of the prime contract will make a determination that it is impractical for the prime or higher tier subcontractor to perform the reviews. The necessary documentation shall be forwarded to the ACO cognizant of the subcontractor for accomplishment of the reviews. In the event the prime contractor does accomplish the reviews envisioned by the CAS clause, he is responsible for the thoroughness of the reviews and must satisfy the ACO cognizant of the prime contract.

(b) When price adjustments or determinations of adequacy, inadequacy, or noncompliance are required by the Government, the ACO cognizant of the subcontractor shall make his recommendations to the ACO cognizant of the prime contractor or next higher tier subcontractor. In the case of price adjustments, the procedures described in 3-1207(c)(iii) shall be followed. The ACO cognizant of the prime contractor or next higher tier subcontractor shall not reverse the determinations of the ACO cognizant of the subcontractor. Such determinations shall be used as the basis for actions with respect to the prime contract.

(c) Post-award submission of the subcontractor's Disclosure Statement (see 3-1203(d)) must be approved by the ACO having cognizance of the prime contractor. Prior to authorizing post-award submission, the ACO cognizant of the prime contractor shall coordinate with the ACO cognizant of the subcontractor to ensure that this action will not have an adverse impact on other contracts and subcontracts subject to CAS requirements, and with the PCO to obtain the information required in making the written determination prescribed by 3-1203(d).

(d) A determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 3-1203(e).

3-1207 Contract Price Adjustments.

(a) Modifications to Disclosure Statements or Established Practices. Paragraph (a)(4) of the Cost Accounting Standards clause (7-104.83(a)(1)) and (a)(3) and (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause (7-104.83(a)(2)) provide for adjustment of contract price under certain circumstances. The cognizant ACO is responsible for obtaining the contractor's cost impact proposal and for the conduct of all negotiations of such adjustments to all Government prime contracts. Prior to the utilization of the provisions of (a)(4)(C) of the Cost Accounting Standards clause or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause, the cognizant contracting officer (ACO) shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

(b) Failure to Comply with Cost Accounting Standards Requirements. Paragraph (a)(5) of the Cost Accounting Standards clause (7-104.83(a)(1)) or paragraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause (7-104.83(a)(2)) provide for an adjustment of the prime contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable cost accounting standard or fails to follow any disclosed accounting practice and such failure results in any increased cost paid by the Government. The cognizant contract auditor shall be responsible for the conduct of audits as necessary to disclose such failures. The cognizant ACO shall negotiate all resultant prime contract adjustments, including applicable interest.

(c) Conduct of Negotiations and Execution of Supplemental Agreements. The cognizant ACO shall require the contractor to include in the cost impact proposal, proposals for adjustment to CAS-covered subcontracts. Negotiations pursuant to (a) and (b) above shall be conducted on behalf of all Government agencies including, but not limited to, DoD, NASA, DoE, and GSA. As part of these negotiations the ACO shall also determine the effect of the change in accounting practices on each subcontract being performed by the contractor and containing the Cost Accounting Standards clause or the Disclosure and Consistency of Cost Accounting Practices clause. The ACO shall invite purchasing offices to participate in negotiations of adjustments when the price of any of their contracts will be increased or decreased by $10,000 or more. At the conclusion of negotiations the following actions shall be taken by the ACO:

(i) Execute supplemental agreements to DoD prime contracts. If additional funds are required, request them from the appropriate PCO.

(ii) Prepare a negotiation memorandum in accordance with 3-811. This negotiation memorandum is of particular importance in that it will be used in reviewing the effectiveness of Cost Accounting Standards, Rules and Regulations. Copies of the memorandum shall be furnished to cognizant auditors and contracting officers of other agencies which have prime contracts affected by the negotiation. Such other agencies shall execute supplemental agreements in the amounts negotiated.

(iii) When a subcontract is to be adjusted, copies of the memorandum indicating the effect on costs shall be furnished the ACO cognizant of the next higher tier subcontractor or prime contractor, as appropriate. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and execution of a supplemental agreement to the subcontract. The ACO cognizant of the next higher tier subcontractor shall furnish in turn a memorandum of these negotiations to the ACO cognizant of the next higher tier subcontractor or prime contractor until the adjustment is reflected in the prime contract.

3-1208 Assignment of Contract Administration Responsibility.

(a) When DoD has contract administration cognizance of a contractor facility, the Administrative Contracting Officer (ACO) cognizant of the facility shall be responsible for performance of the functions in 1-406(c)(lix) through (lxii) not withstanding retention of responsibility by the purchasing office for administration of the contract or specific functions thereunder (see Section XX, Part 7). The cognizant ACO shall perform the functions cited above in 1-406(c) for DoD and all other Government agencies having contracts at that facility (NASA, DoE, GSA, etc.).

(b) When a purchasing office retains responsibility for administration of a CAS-covered contract containing either of the clauses in 7-104.83(a), the procuring contracting officer shall forward one copy of the contract to the contract administration office cognizant of the contractor's facility (see DoD 4105.59H). The following notation will be inserted in bold print on the face of the contract:

"FOR COST ACCOUNTING STANDARDS

ADMINISTRATION ONLY"

(c) In some instances the contracting officer cognizant of a contractor facility will be the representative of a Government agency other than DoD. A list of such assignments will be published from time to time in Defense Procurement Circulars. When prime contract awards are to be made to such contractors, Item 1 of the solicitation provision in 7-2003.67(a) shall be modified by deleting the words "see DoD Directory of Contract Administration Components (DoD 4105.59H)" and inserting the appropriate address. The PCO shall assure that when a CAS-covered contract is awarded to a contractor whose facility is under the cognizance of a non-DoD organization, that a copy of such contract, stamped as indicated in (b) above, is forwarded to the contract administration office of the cognizant agency if the contract is not assigned for field administration. That contracting officer will perform the functions in 1-406(c)(lix) through (lxii) for DoD.

PROCUREMENT BY NEGOTIATION

3-1209 Additional Documentation. The ACO shall prepare a memorandum indicating action taken on advisory audit reports which do not result in contract price adjustments.

3-1210 DoD Annual Report of Cost Accounting Standards Activity.

(a) DoD and other Government agencies are required to furnish to the CAS Board an annual statistical report within 120 days after the close of each calendar year. The DoD report will include the required information on all affected contracts for which DoD has administrative cognizance, including contracts awarded by non-DoD Federal agencies. Each affected Contract Administration Office shall report the information outlined in (b) below. Each Military Department and affected Defense agency shall review reports originating within their Departments and forward a consolidated report to OUSDR&E(CPF) within 60 days following the end of each calendar year.

Report Control Symbol (RCS) DD- DR&E(A)1222 has been assigned to this report.

(b) Composition of Report.

(1) Format:

DoD ANNUAL REPORT OF COST ACCOUNTING STANDARDS ACTIVITY FOR CALENDAR YEAR ....

DAR 3-1210

1. Disclosure Statement Reviews for Adequacy

	Initial	Revisions
Statements Reviewed	....	....
Statements Determined Inadequate	....	....

2. Voluntary Changes

Total in Process 1 Jan. ____________

Total Received During Year ____________

Type I Actions Completed During Year____________

Type II Actions Completed During Year____________

Total Completed During Year ____________

Total in Process 31 Dec. ____________

Total Net Costs Recovered on Type I Completed Actions $____________

Total Increases for Type II Completed Actions $____________

Total Decreases for Type II Completed Actions $____________

3. Noncompliance Determinations

	Pre-award	Performance
Total In Process 1 Jan.	....	....
Total Received During Year	....	....
Total Completed During Year	....	....
Total In Process 31 Dec.	....	....
Total Costs Recovered on Completed Noncompliance Actions	....	....

4. Equitable Adjustments for New Standards

Total in Process 1 Jan.	....	
Total Received During Year	....	
Total Completed During Year	....	
Total in Process 31 Dec.	....	
Total Increases for Completed Actions		$..........
Total Decreases for Completed Actions		$..........

5. ASBCA/Court of Claims Appeals

Undecided Cases:

ASBCA Docket Numbers	*Company*	$..........
Court of Claims Docket Numbers	*Company*	$..........
	TOTAL	$..........

Cases Decided		Settlement	
	Amount Dispute.	Contractor	Government
Docket Numbers	$..........	$..........	$..........

6. Suggestions and Recommendations for Revising CASB Standards, Rules and Regulations.

(2) Special Instructions

(a) *Disclosure Statement Reviews for Adequacy.* This portion of the report is designed to show the number of Disclosure Statements from prime and subcontractors that have been reviewed by the cognizant ACO and the number that were found to be inadequate. Initial submission refers to that which is the first Disclosure Statement submitted by a contractor who was not previously required to disclose. Revised submission refers to substantive changes to a Disclosure Statement submitted by a contractor for whom a current Disclosure Statement is on file in a CAO. Resubmissions will not be counted. Informal discussions with contractors concerning their Disclosure Statements and voluntary corrections will not be reported.

(b) *Voluntary Changes.* Type I Voluntary Changes are those changes processed in accordance with paragraph (a)(4)(B) of the clause in 7-104.83(a)(1) (Cost Accounting Standards) or paragraph (a)(3) of the clause in 7-104.83(a)(2) (Disclosure and Consistency of Cost Accounting Practices). Type II Voluntary Changes are those changes processed in accordance with paragraph (a)(4)(C) of the clause in 7-104.83(a)(1) or paragraph (a)(5) of the clause in 7-104.83(a)(2). Only those cases on which final agreement has been reached on all issues, including price adjustments, will be reported as completed.

(c) *Noncompliance Determinations.* The noncompliance determinations reported will be those where the prime or subcontractor has been formally notified of the noncompliance by the ACO in accordance with 3-1212. For reporting purposes, cases will not be considered closed until the Government and the contractor have arrived at a final agreement on all issues, including price adjustments, or the ACO has issued a unilateral determination or has withdrawn his determination of noncompliance. *"Pre-award"* refers to determinations on which the noncompliance affects only a contract proposal(s). If a determination involves existing contracts together with proposals or disclosed practices, it shall be reported as a performance determination only.

(d) *Equitable Adjustments.* Only those cases on which the final agreement has been reached will be reported as completed.

(e) *Active ASBCA/Court of Claims Appeals.* The dollar amounts reported will be total expected recovery on Government contracts rather than token amounts usually cited in disputes. The amounts shown may reflect amounts previously or currently reported in Items 2-4 of the report.

(f) *Suggestions and Recommendations for Revising CASB Standards, Rules and Regulations.* Recommendations should include information citing the specific improvements to be expected from the proposed changes. If no suggestions are proposed, indicate *"none"*.

3-1211 Waiver of Cost Accounting Standards, Rules and Regulations.

In some instances contractors or subcontractors may refuse to accept all or part of the provisions of the cost accounting standards clauses in 7-104.83(a). If the PCO determines that it is impractical to obtain the materials, supplies or services from any other source, he shall prepare the documentation required by paragraph 331.30(c) of Appendix O together with information indicating the date by which a reply is needed to meet the contract placement date. Data required by 331.30(c)(1)(iii) and 331.30(c)(2)(i) of Appendix O is available from the DD 350 Data Bank and may be obtained by contracting the Procurement and Economic Information Division, OASD(C), Washington, D.C. 20301, or calling 202-697-5619. This documentation and information shall be forwarded through channels to the Director, Contracts and System Acquisition, Office of Under Secretary of Defense (R&E), Washington, D.C. 20301. When a waiver is being requested for substantially the same product or service from the same contractor for which a waiver has previously been granted by the Cost Accounting Standards Board, such request for waiver and its documentation may be submitted directly to the Chairman, Cost Accounting Standards Board, by the cognizant Assistant Secretary for a Military Department, or the Director of the Defense Logistics Agency.

3-1212 Administration of Noncompliance Issues.

(a) *Initial Finding of Compliance or Noncompliance*. The ACO shall, upon receipt of a noncompliance report from the auditor, make an initial finding of compliance or noncompliance within 15 days and advise the auditor.

(b) *Notification to Contractor*. If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and request him, within 30 days, to agree or submit reasons why he considers his existing practices are in compliance.

(c) *Agreement of Contractor*. If the contractor agrees, he shall:

(i) correct the noncompliance; and

(ii) submit the information required by paragraph (a) of the Administration of Cost Accounting Standards clause (7-104.83(b)).

(d) Review of Contractor Change. Upon receipt of the information required in (c) above indicating agreement with the noncompliance, the ACO shall review the accounting change for adequacy and compliance concurrently in accordance with 3-1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to submit the cost impact proposal required pursuant to paragraph (b) of the Administration of Cost Accounting Standards clause (7-104.83(b)). It shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each CAS-covered contract and subcontract. It shall contain as a minimum the following information:

(i) identification of all contracts and subcontracts containing the Cost Accounting Standards clause;

(ii) if the noncompliance involves Standards 401 or 402, or a failure to comply with disclosed or established practices, identification of all contracts and subcontracts containing the Disclosure and Consistency of Cost Accounting Practices clause; and

(iii) the cost impact on each such contract and subcontract from the date of failure to comply until the noncompliance is corrected.

(e) *Receipt of Cost Impact Proposal*. Upon receipt of an acceptable proposal from the contractor, the ACO shall promptly analyze the proposal with the assistance of the auditor and negotiate the contract price adjustments pursuant to 3-1207.

(f) *Failure to Submit Cost Impact Proposal*. If the contractor fails to furnish the cost impact proposal in the form and time specified, the ACO shall take action in accordance with paragraph (h) below.

(g) *Disagreement of Contractor*. The ACO shall review the contractor's submission in (b) above and make a determination of compliance or noncompliance.

(h) *Decision of Contracting Officer*.

(1) If the ACO makes a determination of compliance, he shall notify the contractor with a copy to the auditor.

(2) If the ACO makes a determination of noncompliance, or if the contractor fails to furnish the cost impact proposal, the ACO, with the assistance of the auditor shall estimate the cost impact of the noncompliance on contracts and subcontracts containing the Cost Accounting Standards clause.

(3) If the ACO's estimate indicates increased costs to the Government, he shall notify the contractor and request agreement as to the cost or price adjustment, together with any applicable interest. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with paragraph (b) of the clauses in 7-104.83(a). If the ACO subsequently takes such action, he shall also consider appropriate action to protect the interest of the Government, pursuant to Appendix E, Part 6, with respect to the amount thus demanded from the contractor.

(4) If the ACO's estimate indicates there are no increased costs as a result of the noncompliance, and the contractor refuses to take corrective action, the ACO shall notify the contractor in writing that he is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in increased costs to the Government, the provisions of the cost accounting standards clauses shall be enforced.

3-1213 Administration of Equitable Adjustment for New Standards.

(a) *Additional Solicitation Notice*. Those solicitations required by 3-1203(a) to include the solicitation notice in 7-2003.67(a) shall also include the notice entitled *Additional Cost Accounting Standards Applicable to Existing Contracts* in 7-2003.67(d). The PCO shall assure that the contractor's response to the notice is made known to the ACO. This may be accomplished by attaching a copy of the response to the copy of the contract provided the ACO.

(b) *Requirement for Equitable Adjustment*. Contracts and subcontracts containing the *Cost Accounting Standards* clause (7-104.83(a)(1)) may require equitable adjustment to comply with new cost accounting standards. Such adjustments are limited to contracts and subcontracts awarded prior to the effective date of each new standard. A new standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause is awarded on or after the effective date of such new standard. Contractors are encouraged to submit to the ACO any change in accounting practice in anticipation of complying with a new standard as soon as practicable after the new standard has been fully promulgated by the Cost Accounting Standards Board. Equitable adjustment is limited to those circumstances when a change in cost accounting practices is required to implement a new standard.

(c) *Review of Contractor Change*. Upon receipt of information required pursuant to paragraph (a) of the *Administration of Cost Accounting Standards* clause (7-104.83(b)) from the contractor indicating an accounting change is required to comply with a new standard, the ACO shall review the proposed change concurrently for adequacy and compliance in accordance with 3-1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to submit the cost impact proposal required pursuant to paragraph (b) of the *Administration of Cost Accounting Standards* clause (7-104.83(b)). It shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each contract and subcontract containing the *Cost Accounting Standards* clause. It shall contain as a minimum the following information:

(i) identification of each additional standard, together with contract and subcontracts containing the *Cost Accounting Standards* clause having an award date prior to the effective date of such standard; and

(ii) the effect on each contract and subcontact from the date the contractor is required to follow the standard until completion of the contract or subcontract.

(d) *Receipt of Cost Impact Proposal.* Upon receipt of an acceptable proposal from the contractor, the ACO shall promptly analyze the proposal with the assistance of the auditor and negotiate the contract price adjustments pursuant to 3-1207.

(e) *Failure to Submit Cost Impact Proposal or Reach Agreement Concerning Cost Impact.*

(1) If the contractor does not submit a proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing the *Cost Accounting Standards* clause.

(2) Upon completion of the estimate indicating the effect on contract costs, the ACO shall request agreement from the contractor as to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the *Disputes* clause of the contract. If the ACO issues a unilateral determination under the *Disputes* clause, he shall consider appropriate action to protect the interests of the Government, with respect to the amount demanded from the contractor, pursuant to Appendix E, Part 6.

3-1214 Administration of Voluntary Changes.

(a) Notification of Proposed Change. When a contractor who has contracts or subcontracts containing either of the cost accounting standards clauses in 7-104.83(a) plans to make a voluntary change to an accounting practice, he must submit the information required by paragraph (a) of the Administration of Cost Accounting Standards clause (7-104.83(b)).

(b) *Review of Contractor Change.* Upon receipt of the information required in (a) above, the ACO shall review the accounting change concurrently for adequacy and compliance in accordance with 3-1205(d). Upon completion of the review indicating that the change is both adequate and in compliance, the contractor shall be notified and requested to furnish the cost impact proposal required pursuant to paragraph (b) of the *Administration of Cost Accounting Standards* clause (7-104.83(b)). It shall be in sufficient detail to permit evaluation and negotiation of the cost impact upon each contract and subcontract containing the *Cost Accounting Standards* clause. It shall contain as a minimum the following information:

(i) identification of all contracts and subcontracts containing the Cost Accounting Standards clause; and

(ii) the effect on each contract and subcontract from the effective date of the proposed change until completion of the contract or subcontract.

(c) Receipt of Cost Impact Proposal. Upon receipt of an acceptable proposal from the contractor, the ACO shall promptly analyze the proposal with the assistance of the auditor for purposes of determining whether or not the proposed change will result in increased costs being paid by the United States. In considering the proposed adjustments to subcontracts containing the Cost Accounting Standards clause for the purposes of determining whether increased cost to the United States will result from the change, the ACO shall not consider the effect of the proposed adjustments upon the prime contracts and subcontracts under which the subcontracts were entered into. If the ACO determines that the proposed adjustments will not result in an increase in the aggregate cost to be paid under the contracts and subcontracts, containing the Cost Accounting Standards clause, he shall promptly negotiate the contract price adjustments pursuant to 3-1207. If the ACO determines that the proposed adjustments will result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing the Cost Accounting Standards clause, he shall so notify the contractor and advise him that the proposed change will not be recognized unless an agreement can be reached which will prevent an increase in the aggregate cost to be paid under such contracts and subcontracts. Contracts and subcontracts which contain paragraph (a)(4)(C) of the Cost Accounting Standards clause or paragraph (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause provide for equitable adjustment for changes if the contracting officer determines that the change is desirable and not detrimental to the interests of the Government (see 3-1207(a)). When the ACO makes such a determination, he shall notify the contractor and the parties will negotiate an equitable adjustment.

(d) ***Failure to Submit Cost Impact Proposal or Reach Agreement Concerning Cost Impact.***

(1) If the contractor does not submit a proposal in the form and time specified or if the parties fail to agree concerning the cost impact, the ACO, with the assistance of the auditor, shall estimate the cost impact on contracts and subcontracts containing the *Cost Accounting Standards* clause.

(2) Upon completion of the estimate indicating the effect on contract costs, the ACO shall request agreement from the contractor as to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, action may be taken in accordance with the *Disputes* clause of the contract. If the ACO issues a unilateral determination under the *Disputes* clause, he shall consider appropriate action to protect the interests of the Government, with respect to the amount demanded from the contractor, pursuant to Appendix E, Part 6.

Part 13—Facilities Capital Employed for Facilities in Use or Under Construction

3-1300 Facilities Capital Employed for Facilities in Use.

3-1300.1 *Policy.*

(a) It is the policy of the Department of Defense to recognize facilities capital employed as an element in establishing the price of certain negotiated defense contracts when such contracts are priced on the basis of cost analysis. The inclusion of this recognition is intended to reward contractor investments, motivate increased productivity and reduced costs through the use of modern manufacturing technology, and to generate other efficiencies in the performance of defense contracts. The recognition of contractor investments in the development of the profit objective will result in a profit objective based on a combination of effort, risk, and investment factors.

(b) Separate recognition shall be given to the cost of capital and the special risk associated with the facilities capital employed for defense contract purposes.

(1) The risk aspect of facilities capital employed shall be recognized as a part of profit when the profit objective is established in accordance with the guidelines set forth in 3-808. (See especially 3-808.7).

(2) Cost of money for facilities capital will be recognized as an allowable cost in those negotiated defense contracts priced on the basis of cost analysis. (See 15-205.50).

(c) *Applicability*. This policy shall apply to contracts awarded on or after 1 October 1976. This policy shall apply to modifications to contracts awarded prior to 1 October 1976, *provided* the contractor will estimate, accumulate and report the cost of the modification without incurring unreasonable administrative expense, and contract terms and conditions are amended to make 15-205.50 applicable to the modification. This policy and the above requirement shall apply to any tier subcontract or modifications thereto, upon the subcontractor's request, *provided* the prime contract or modification thereto was eligible as of the date of award for facilities capital cost of money in accordance with 15-205.50.

3-1300.2 *Definitions, Measurement and Allocation*. Cost Accounting Standard (CAS) No. 414, "Cost of Money as an Element of the Cost of Facilities Capital," incorporated in ASPR Appendix O, establishes criteria for the measurement and allocation of the cost of capital committed to facilities, as an element of contract cost for historical cost determination purposes. Important features of the CAS are its definitions, techniques for application, and a prescribed Form CASB-CMF with instructions. This Part adopts the techniques of CAS 414 as the approved method of measurement and allocation of facilities cost of money to overhead pools at the business unit level, and adds only such supplementary procedures as are necessary to extend those techniques to contract forward pricing and administration purposes. Therefore, these procedures are intended to be completely compatible with, and an extension of, the definitions, criteria and techniques of CAS 414. Contractors who computerize their financial data are encouraged to meet the requirements of both CAS 414 and this Part from the same data bank and programs.

3-1300.3 *Estimating Business Unit Facilities Capital and Cost of Money*. The method of estimating the business unit facilities capital and cost of money utilizes the techniques of CAS 414. Cost of money factors (CMF) by overhead pools at the business unit are developed using Form CASB-CMF. Three elements are required to develop cost of money factors: business unit facilities capital data, overhead allocation base data, and the interest rate promulgated by the Secretary of the Treasury pursuant to Public Law 92–41. These elements are discussed below.

(a) *Business Unit Facilities Capital Data*. The net book value (acquisition cost less accumulated depreciation) is used for each cost accounting period. The net book value used is the total of (i) the net book value of facilities recorded on the accounting records of the business unit, (ii) the capitalized value of leases (see 15–205.34 and 15–205.48), and (iii) the net book value of facilities at the corporate or group level that support depreciation charges allocated to the business unit in accordance with the provisions of CAS 403. Projections of facilities capital will be supported by budget plans and/or similar type documentation and the estimated depreciation will be the same as used in projected overhead rates. Projections will accommodate changes in the level of facilities net book value, *e.g.*, facilities additions, deletions of facilities by sale, abandonment or other disposal, idle facilities (see 15–205.12).

(b) *Overhead Allocation Bases*. The base data used to compute the CMF must be the same as that used to compute the proposed overhead rates. CMF's should be submitted and evaluated as part of the proposal.

(c) *Interest Rate*. For purpose of projection, the most recent interest rate promulgated by the Secretary of the Treasury will be used as the cost of money rate in Column 1 of Form CASB-CMF and the same rate must be used on the DD Form 1861 to determine Contract Facilities Capital Employed (see 3–1300.4(c) below). Where actual costs are used in definitization actions, the actual treasury rate(s) applicable to the period(s) of the incurred costs will be recognized by development of a composite rate.

(d) *Determination of Final Cost of Money*. CMF's estimated in accordance with the above procedures are used to develop the facilities investment base used in the pre-negotiation profit objectives. Actual CMF's are required when it is necessary to determine final allowable costs for cost settlement and/or repricing in accordance with CAS 414 and 15–205.50.

3–1300.4 *Contract Facilities Capital Estimates*.

(a) After the appropriate Forms CASB-CMF have been analyzed and CMF's have been developed, the contracting officer is in a position to estimate the facilities capital cost of money and capital employed for a contract proposal. DD Form 1861 "Contract Facilities Capital and Cost of Money" has been provided for this purpose and, when properly completed, becomes a connecting link between the Forms CASB-CMF and DD Form 1547 "Weighted Guidelines Profit/Fee Objective." An evaluated contract cost breakdown, reduced to the contracting officer's prenegotiation cost objective, must be available. The procedure is similar to applying overhead rates to appropriate overhead allocation bases to determine contract overhead costs.

(b) DD Form 1861 provides for listing overhead pools and direct-charging service centers (if used) in the same structure they appear on the contractor's cost proposal and Forms CASB-CMF. The structure and allocation base units-of-measure must be compatible on all three displays. The base for each overhead pool must be broken down by year to match each separate Form CASB-CMF. Appropriate contract overhead allocation base data are extracted by year from the evaluated cost breakdown or pre-negotiation cost objective, and are listed against each separate Form CASB-CMF. Each allocation base is multiplied by its corresponding cost of money factor to get the Facilities Capital Cost of Money estimated to be incurred each year. The sum of these products represents the estimated Contract Facilities Capital Cost of Money for the year's effort. Total contract facilities cost of money is the sum of the yearly amounts.

(c) Since the Facilities Capital Cost of Money Factors reflect the applicable cost of money rate in Column 1 of Form CASB-CMF, the Contract Facilities Capital Employed can be determined by *dividing* the contract Cost of Money by that same rate. DD Form 1861 is designed to record and compute all the above in the most direct way possible, and the end result is the Contract Facilities Capital Cost of Money and Capital Employed which is carried forward to DD Form 1547.

3-1300.5 *Pre-Award Facilities Capital Applications.* Facilities Capital Cost of Money and Capital Employed as determined above, are applied in establishing cost and price objectives as follows.

(a) *Cost of Money.*

(1) *Cost Objective.* This special, imputed cost of money shall be used, together with normal, booked costs, in establishing a cost objective or the target cost when structuring an incentive type contract. Target costs thus established at the outset, shall not be adjusted as actual cost of money rates become available for the periods during which contract performance takes place.

(2) *Profit Objective.* Cost of money shall not be included as part of the cost base when measuring the contractor's effort in connection with establishing a pre-negotiation profit objective. The cost base for this purpose shall be restricted to normal, booked costs.

(b) *Facilities Capital Employed.* The profit objective as it relates to the risk associated with facilities capital employed shall be assessed and weighted in accordance with the profit guidelines set forth in 3-808.7.

3-1300.6 *Post Award Facilities Capital Applications.*

(a) *Interim Billings Based on Costs Incurred.* Contract Facilities Capital Cost of Money may be included in cost reimbursement and progress payment invoices. The amount that qualifies as cost incurred for purposes of the "Cost Reimbursement, Fee and Payment" or "Progress Payment" clause of the contract is the result of multiplying the incurred portions of the overhead pool allocation bases by the latest available Cost of Money Factors. Like applied overhead at forecasted overhead rates, such computations are interim estimates subject to adjustment. As each year's data are finalized by computation of the actual Cost of Money Factors under CAS 414 and ASPR 15-205.50, the new factors should be used to calculate contract facilities cost of money for the next accounting period.

(b) *Final Settlement.* Contract facilities capital cost of money for final cost determination or repricing is based on each year's final Cost of Money Factors determined under CAS 414 and supported by separate Forms CASB-CMF. Contract cost must be separately computed in a manner similar to yearly final overhead rates. Also like overhead costs, the final settlement will include an adjustment from interim to final contract cost of money. However, estimated or target cost will not be adjusted.

3-1300.7 *Administrative Procedures.*

(a) Contractor submission of Forms CASB-CMF will normally be initiated under the same circumstances as Forward Pricing Rate Agreements (see 3-807.8), and evaluated as complementary documents and procedures. Separate Forms are required for each prospective cost accounting period during which Government contract performance is anticipated. If the contractor does not annually negotiate FPRA's, submissions may nevertheless be made annually *or* with individual contract pricing proposals, as agreed to by the contractor and the cognizant ACO. The cognizant ACO shall, with the assistance of the cognizant auditor, evaluate the cost of money factors, and retain approved factors with other negotiated forward pricing data and rates.

(b) When a contracting officer uses the Weighted Guidelines method of determining a profit objective under the criteria of 3-808.2, he will complete a DD Form 1861 "Contract Facilities Capital and Cost of Money" after evaluating the contractor's cost proposal and determining this pre-negotiation cost objective, but before completing a DD Form 1547 "Weighted Guidelines Profit/Fee Objective". When available, a computer generated form is acceptable, provided all essential elements of data are included and identified as DD Form 1861 data. At his option, a PCO may request the cognizant ACO to complete the DD Form 1861 in connection with normal field pricing support under 3-801.5, and include it in his field pricing report with appropriate evaluation comments and recommendations.

(c) A final Form CASB-CMF must be submitted by the contractor under CAS 414 as soon after the end of each cost accounting period as possible, for the purpose of final cost determinations and/or repricing. The submission should accompany the contractor's proposal for actual overhead costs and rates, and be evaluated as complementary documents and procedures.

3-1301 Facilities Capital Employed for Facilities Under Construction.

3-1301.1 *Policy.* It is the policy of the Department of Defense to recognize a contractor's investment in capital facilities while these are being constructed, fabricated, or developed for the contractor's own use. This recognition is made through the allowance of an imputed cost of money amount which is (i) calculated in accordance with 3-1301.3 below, (ii) capitalized along with the other costs of the asset for which the investment is made, and (iii) allocated to Department of Defense contracts in accordance with 3-1301.4.

3-1301.2 *Definitions*. The following definitions have been taken or developed from Cost Accounting Standard (CAS) 417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, which has been incorporated in DAR Appendix O.

(a) *Intangible Capital Asset*. An asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the benefit it yields.

BEST DOCUMENT AVAILABLE

(b) *Tangible Capital Asset.* An asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the service it yields.

(c) *Cost of Money Rate.* The cost of money rate is either the interest rate determined by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat 97), or the time-weighted average of such rates for each cost accounting period during which the asset is being constructed, fabricated, or developed. The time-weighted average interest rate is calculated by multiplying the various rates in effect during the months of construction by the number of months each rate was in effect. The sum of the products is divided by the total number of months in which the rates were experienced.

(d) *Representative Investment.* The representative investment is the calculated amount considered invested by the contractor in the project to construct, fabricate, or develop the asset during the cost accounting period. In calculating the representative investment, consideration must be given to the rate or expenditure pattern of the investment, i.e., if most of the investment was at the end of the cost accounting period, the representative investment calculation must reflect this fact.

(1) If the contractor experiences an irregular or uneven expenditure pattern in the construction, fabrication, or development of a capital asset, i.e., a majority of the construction costs were incurred toward the beginning, middle, or end of the cost accounting period, the contractor must either:

- (i) determine a representative investment amount for the cost accounting period by calculating the average of the month-end balances for that cost accounting period; or
- (ii) treat month-end balances as individual representative investment amounts.

(2) If the construction, fabrication, or development costs were incurred in a fairly uniform expenditure pattern throughout the construction period, the contractor may:

- (i) determine a representative investment amount for the cost accounting period by averaging the beginning and ending balances of the construction, fabrication, or development cost account for the cost accounting period; or
- (ii) treat month-end balances as individual representative investment amounts.

3-1301.3 *Measurement.*

(a) The imputed cost of money for an asset under construction, fabrication, or development is calculated by applying a cost of money rate (see 3-1301.2(c)), to the representative investment amount (see 3-1301.2(d)).

(1) When a representative investment amount is determined for a cost accounting period in accordance with 3-1301.2(d)(1)(i) or 3-1301.2(d)(2)(i), the cost of money rate used shall be the time-weighted average rate.

(2) When a monthly representative investment amount (see 3-1301.2(d)(1)(ii) or 3-1301.2(d)(2)(ii)) is used, the cost of money rate shall be the rate in effect each month. (Note: Under this method, the cost of money calculation is made monthly and the total for the cost accounting period is the sum of the monthly calculations.)

(b) The method chosen by a contractor for determining the representative investment amount may be different for each capital asset being constructed, fabricated, or developed as long as the method fits the expenditure pattern of the construction costs incurred.

(c) The imputed cost of money will be capitalized only once in any cost accounting period; either at the end of the period or at the end of the construction period, whichever comes first.

(d) When the construction of an asset takes more than one cost accounting period, the cost of money capitalized for the first cost accounting period will be included in determining the representative investment amount for any future cost accounting periods.

3-1301.4 *Composition and Allocation of Costs.*

(a) The cost of money for a tangible capital asset determined in accordance with 3-1301.2 and 3-1301.3 shall be capitalized along with the other construction, fabrication, or development cost of that asset for purposes of depreciation pursuant to 15-205.9.

(b) The cost of money for an intangible capital asset determined in accordance with 3-1301.2 and 3-1301.3 shall be capitalized along with other construction, fabrication, or development costs of that asset and amortized over appropriate cost accounting periods.

(c) Where CAS 414 cost of money is allocated to construction, fabrication, or development effort in accordance with 3-1300, it will be recognized and considered an element of total construction costs and be included in all calculations of the asset's representative investment amount.

3-1301.5 *Limitations.* If substantially all activities necessary to get an asset ready for its intended use are discontinued, cost of money shall not be capitalized for the period of discontinuance, except when such discontinuance arises out of causes beyond the control and without the fault or negligence of the contractor.

3-1301.6 *Preaward Capital Employed Application.* An offset to the profit objectives as set forth in 3-808.7 is not required for CAS 417 cost of money.

Part 14—Indirect Cost Monitoring Office

3-1400 Scope of Part. This Part deals with the organization and function of the Indirect Cost Monitoring Office (ICMO) and its role in the DoD procurement process.

3-1401 General. The Indirect Cost Monitoring Office (ICMO), under the direction of the Director, Contracts and Systems Acquisition, Office of the Under Secretary of Defense, Research and Engineering, is responsible for assuring uniform application of contracting policies and consistent treatment of cost allowability including research and development/bid and proposal (IR&D/B&P) costs, and for promoting timely and equitable settlement of overhead and advance agreements for IR&D/B&P costs. The function of the ICMO will include:

(i) maintaining a data bank concerning Section XV cost principles;

(ii) maintaining a liaison with DCAA to achieve maximum consistency between negotiation decisions and audit decisions as to contracting officer determined and audit determined final overhead rates;

(iii) attending, after coordination with the Departments, selected negotiations of final overhead rates to act as an observer/advisor, as appropriate, and to identify problem areas requiring policy change;

(iv) monitoring the negotiation of advance agreements for IR&D/B&P in order to assure maximum uniformity and consistency, and maintaining an awareness of matters that may require policy change;

(v) recommending to the Director, Contracts and Systems Acquisition (C&SA), OUSD(R&E), policy changes as needed;

(vi) monitoring establishment of CACO's and the conduct of contracting officer determination assignments in accordance with established criteria. The responsibility and authority for establishing the positions and designation of the individual to perform the function remains with the cognizant Department;

(vii) maintaining a master list of contractor locations and responsible activities where final overhead rates are contracting officer determined and negotiated advance agreements for IR&D and B&P costs are required by Public Law 91-441;

(viii) providing advice in resolving disagreements between CACO's and ACO's designated by different Departments and assigned final overhead determination responsibilities within a corporation or business enterprise;

(ix) reviewing proposed changes relative to the assignments for negotiation of IR&D/B&P advance agreements, and making appropriate recommendations to the Director (C&SA), OUSD(R&E).

3-1402 Master List Reports.

(a) The Departments and DCAA shall furnish the following reports to the ICMO:

(i) a report submitted within 10 working days after the close of each fiscal quarter shall list newly acquired or recently transferred contractors, as well as those business entities that no longer exist due to reorganizations, mergers or consolidations. This report is covered by RCS DD-DR&E(Q)1556.

(ii) a report submitted within 30 days after the close of the fiscal year ending 30 September 1980 and every two years thereafter, listing the contractors for which each Department and DCAA has cognizance for final overhead rates. This report is covered by RCS DD-DR&E(B)1557.

(b) The reports required in (a) above shall include as a minimum:

(i) contractor's name, location(s) (i.e., mailing address, specifically: street address, city, state, zip code), and fiscal year ending date (YYMMDD);

(ii) Department of cognizant ACO and location by assigned negotiation unit (including ACO name (last name, first, middle initial), mailing address (street address, city, state, zip code) and telephone number);

(iii) Department of CACO and location (including CACO name (last name, first, middle initial), mailing address (street address, city, state, zip code) and telephone number);

(iv) whether contractor has advance agreement for Independent Research and Development (IR&D) and Bid and Proposal (B&P) costs and, if so, the cognizant negotiating activity.

(v) the most recent year for which the contractor's final overhead rates have been completed.

(c) All reports and correspondence to the ICMO shall be addressed to:

Headquarters, Naval Material Command (MAT 08CD)
Indirect Cost Monitoring Office (ICMO)
Washington, D. C. 20360

3-1403 Status and Completion Reports. The ICMO shall maintain a current listing of the status of open overhead negotiations together with a record of ultimate resolutions and rationale for significant items of questioned costs. The following two reports from the field will provide the basis for this information.

(a) *Report on Status of Open Overhead Negotiations.* The Departments and DCAA shall submit a report on the status of open overhead negotiations to the ICMO semi-annually for which a *Report of Completed Overhead Negotiation*, as described in (b) below, has not been filed. The report on the status of open overhead negotiations shall include the following information:

(i) ending date (YYMMDD) of the period being reported upon;

(ii) contractor name, location (i.e., mailing address, specifically: street address, city, state, zip code), and negotiation unit;

(iii) information setting forth which of the steps in DAR 3-705(b) have been completed in which open years;

(iv) any explanatory comments considered appropriate.

This report is covered by RCS DD-DR&E(SA)1558.

(b) *Report of Completed Overhead Negotiation.* This report will serve to tell the ICMO that a particular overhead agreement has been negotiated and that all of the steps required by DAR 3-705(b) have been completed. The Departments shall send the *Report of Completed Overhead Negotiation* to the ICMO within 30 days after the overhead agreement is executed. If the negotiation memorandum prepared by the cognizant negotiating activity under the provisions of DAR 3-705(b)(5) contains or is supplemented to include all of the information required below in the Completion Report, the negotiation memorandum may be furnished to the ICMO in lieu of that report. The Completion Report shall contain the following:

(i) date (YYMMDD) report filed;
(ii) date (YYMMDD) of execution of overhead agreement;
(iii) name of contractor;
(iv) negotiation unit/location (i.e., mailing address, specifically: street address, city, state, zip code) for which rates have been agreed upon;
(v) fiscal year negotiated (ending date (YYMMDD));
(vi) total sales in year negotiated;
(vii) Government sales in year negotiated;
(viii) DoD sales in year negotiated;
(ix) responsible Government negotiating activity (including address (street address, city, state, zip code) and telephone number);
(x) name of Administrative Contracting Officer (last name, first, middle initial);
(xi) identification of the issue/account involved;
(xii) total amount of account involved;
(xiii) the total amount questioned by the Government;
(xiv) the ultimate mode of resolution; of total amount of account involved, this may be either:
  (A) costs incurred but not claimed or proposed by the contractor; or
  (B) costs with which the contractor concurred as unallowable prior to negotiation; or
  (C) costs questioned by the Government but not agreed to by the contractor and ultimately resolved at the negotiation conference;

(xv) the amount ultimately disallowed;
(xvi) the DAR or CAS reference under which the cost was claimed to be valid, if applicable;
(xvii) the DAR or CAS reference under which the cost was disallowed, if applicable;
(xviii) a narrative paragraph setting forth in sufficient detail the issues and rationale for their resolution.

Note: For contractors with DoD sales less than $100 million, the report shall only provide comments relative to items (i) through (x) above.

This report is covered by RCS DD-DR&E(AR)1559.

(c) *Report of Completed IR&D/B&P Advance Agreements.* For those contractors required by P.L. 91-441 to negotiate IR&D/B&P advance agreements pursuant to 15-205.3 and 15-205.35, the cognizant Departmental Office will send to the ICMO the Report of Completed IR&D/B&P Negotiation within 60 days after the agreement is executed, including a copy of the advance agreement. The report shall include, as a minimum, the current year negotiated and the three preceding years:

(i) the amount proposed for each ceiling of IR&D and B&P;
(ii) the ceiling negotiated for both IR&D and B&P;
(iii) the actual cost incurred for IR&D and B&P (through preceding years only);
(iv) the dollar amounts of the allocation base together with a narrative description of the base of allocation, including a listing of all exclusions;
(v) the amount recovered from DoD for each of the IR&D and B&P expenditures;
(vi) total sales for commercial, DoD, NASA and other Government. The DoD sales figure shall be broken down by sales for each military department and should be further quantified as to type (i.e., firm fixed price, CPFF, etc.).
(vii) technical rating.

This report is covered by RCS DD-DR&E(AR)1560.

3-1404 Data Bank. A data bank will be established and maintained by the ICMO for the purpose of consolidating and maintaining such data as may be needed by DoD personnel in the determination of overhead rates. The data bank will be a compilation of materials furnished by DoD and participating DoD components, which material may contain confidential business data that must be protected in accordance with applicable law and regulation (see 1-329.3(c)(4)). Such material shall include ICMO Working Group papers, selected findings of the ICMO reporting systems, Departmental policy and guidance statements and special topical reports, and other appropriate material.

3-1405 Guidance Papers.

(a) The ICMO guidance papers are issued to provide criteria for Government field personnel to use in the resolution of identified problems. The criteria set forth in the guidance paper shall be used for purposes of establishing a basis for the resolution of the subject issues. In the final settlement, the contracting officer and cognizant DCAA auditor are still responsible for exercising their best judgment in such a manner to protect the best interest of the Government on each individual issue.

(b) Proposed guidance papers will be coordinated with representatives of the ICMO Working Group as indicated in 3-1406. The coordinated guidance paper, along with Departmental and DCAA positions, will be presented to the Director (C&SA), OUSD(R&E), for approval and publication as appropriate.

3-1406 ICMO Working Group. The Working Group shall consist of representatives of each Military Department, DLA/DCAS, and DCAA. Representatives of OUSD(R&E)(C&SA) and OASD(C)DASD(Audit) will participate as consultants. The Working Group shall be chaired by the ICMO designee. It shall meet at the call of the Chairman to coordinate actions and perform research. The Chairman shall specify task assignments, establish cases and assign case numbers, make case assignments to Working Group members, determine case priorities, and issue resulting guidance papers. Projects which require expenditure of significant DoD resources shall be approved by the Director (C&SA), OUSD(R&E), prior to initiation.

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SECTION IV

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 1—Procurement of Research and Development

4–100 Scope of Part. Procurement procedures of special application to research and development contracts are set forth in this Part, and in certain instances other portions of this Regulation having particular significance to research and development contracts are cross-referenced herein. This Part, however, does not purport to contain or cross-reference all provisions of this Regulation applying to research and development contracts. Other provisions of this Regulation are also applicable to research and development contracts and shall be adhered to where applicable.

4–101 Definitions.

(a) The following terms and categories relating to "research and development" are those set forth by the Department of Defense for management of RDT&E programs. However, the term "research and development" as used in this regulation ordinarily encompasses only the first five categories below. Generally, it does not cover category (6) below. For example, construction of recreational facilities at an installation used exclusively or generally for research and development would not be procurement of "research and development" under this regulation. Nevertheless in an exceptional case, depending upon the particular facts, some kinds of work within category (6) could be "research and development" within this regulation.

(1) *Research* — includes all effort of scientific study and experimentation directed toward increasing knowledge and understanding in those fields of the physical, engineering, environmental and life sciences related to long-term national security needs. It provides fundamental knowledge required for the solution of military problems. It forms a part of the base for (a) subsequent exploratory and advanced developments in Defense related technologies, and (b) new or improved military functional capabilities in areas such as communications, detection, tracking, surveillance, propulsion, mobility, guidance and control, navigation, energy conversion, materials and structures, and personnel support.

(2) *Exploratory Development* — includes all effort directed toward the solution of specific military problems, short of major development projects. This type of effort may vary from fairly fundamental applied research to quite sophisticated bread-board hardware, study, programming and planning efforts. It would thus include studies, investigations and minor development effort. The dominant characteristic of this category of effort is that it be pointed toward specific military problem areas with a view toward developing and evaluating the feasibility and practicability of proposed solutions and determining their parameters.

(3) *Advanced Development* — includes all effort directed toward projects which have moved into the development of hardware for test. The prime result of

this type of effort is proof of design concept rather than the development of hardware for service use. Projects in this category have a potential military application.

(4) *Engineering Development* — includes those projects in full-scale engineering development for Service use but which have not yet received approval for production or had production funds included in the DoD budget submission for the budget or subsequent fiscal year. This area is characterized by major line item projects and program control will be exercised by review of individual projects.

(5) *Operational System Development* — includes those projects still in full-scale engineering development but which have received approval for production through DSARC or other action, or production funds have been included in the DoD budget submission for the budget or subsequent fiscal year. All items in this area are major line item projects which appear as RDT&E Costs of Weapons Systems Elements in other programs. Program control will thus be exercised by review of the individual projects.

(6) *Management and Support* — includes all effort directed toward support of installations or operations required for general research and development use. Included would be military construction of a general nature unrelated to specific programs, maintenance support of laboratories, operation and maintenance of test ranges, and maintenance of test aircraft and ships. Costs of laboratory personnel, either in-house or contract-operated, would be assigned to appropriate projects or as a line item in the Research, Exploratory Development, or Advanced Development Program areas, as appropriate.

(b) *Educational or other nonprofit organization* — means any corporation, foundation, trust, or institution operated for purposes of higher education or whose primary purpose is the conduct of scientific research, not organized for profit and no part of whose net earnings inure to the profit of any private shareholder or individual.

(c) *Unsolicited proposal* is a research or development proposal which is made to the Government by a prospective contractor without prior formal or informal solicitation from a purchasing activity. Also see Part 9 of Section IV.

4-102 General Policy. A fundamental mission of research and development programs is to maintain scientific and technological superiority requisite to promote and advance the effectiveness of military operations. The accomplishment of this mission requires the broadest possible base of contractor and subcontractor sources including the optimum use of manpower and resources. It is essential that the best technical competence be located and fully utilized. The procurement pattern of research and development must be responsive to the achievement of these goals on a timely basis.

4-103 Publicizing Procurement Actions and Expanding Sources.

(a) The Departments shall continually search for and develop information on sources (including small business concerns) competent to perform research and development. Advance publicity, including use of the *Commerce Business Daily* (see 1-1003.4) to the fullest extent practicable, shall be given for this purpose. The search should include (i) a review of relevant data or brochures furnished by sources seeking research and development work and (ii) a cooperative effort by technical personnel, small business specialists, and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirement.

(b) In addition to (a) above, and where the procurement mission warrants it, Research and Development Bidders Mailing Lists will be established by purchasing activities in accordance with ASPR Supplement No. 4, "Procedures for Submission of Applications To Be Placed on Research and Development Bidders Mailing Lists."

4-104 Method of Contracting. In research and development procurements it is generally not possible to formulate precise specifications necessary for formal advertising and, therefore, negotiation is necessary. The inherent difficulties in obtaining research and development by formal advertising are recognized by the exception in 3-211. However, two-step formal advertising as stated in Section II, Part 5, may be useful, for example, in the case of an advanced developmental project. While the use of negotiation is the general rule for research and development contracts, this does not diminish the obligation to obtain competition to the maximum practicable extent. (See Section III, Parts 1 and 2.)

4-105 Statement of Work.

(a) The preparation and use of a clear and complete statement of work is essential to sound contracting for research and development. In research, exploratory development and advanced development, statements of work must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity, both in submitting proposals and in contract performance. Careful distinction must be drawn between level-of-effort work statements, which essentially require the furnishing of technical effort and a report on the results thereof, and task completion type work statements which often require development of tangible end items designed to meet specific performance characteristics.

(b) In preparing statements of work, the following elements shall be considered:

(i) a general description of the required objectives and desired results;
(ii) background information helpful to a clear understanding of the requirements and how they evolved;
(iii) technical considerations, such as any known specific phenomena or techniques;
(iv) a detailed description of the technical requirements and subordinate tasks;
(v) a description of reporting requirements and any other deliverable items, such as data, experimental hardware, mock-ups, prototypes, etc.;
(vi) design to cost requirements; and
(vii) other special considerations.

4-106 Selection of Research and Development Contractors.

4-106.1 *Selection of Sources.*

(a) *General.* Through its research and development programs, the Department of Defense must seek the most advanced scientific knowledge attainable and the best possible equipment, weapons, and weapon systems that can be devised and produced. This means two things. First, it means seeking the best scientific and technological sources consistent with the demands of the proposed procurement for the best mix of cost, performances and schedules. Second, it means unremitting efforts to increase the number of qualified sources, and to encourage participation by small business concerns, as well as others, in Defense research and development. Alternate proposals provide a means to accomplish the two actions above. See also 1-903.

(b) *Small Business Sources.*

(1) Contracting officers, technical personnel, and small business specialists shall cooperatively seek and develop information on the technical competence of small business concerns for research and development contracts. Small business specialists shall regularly bring to the attention of contracting officers and technical personnel descriptive data, brochures, and other information as to small business concerns that are apparently competent to perform research or development work in fields in which the purchasing activity is interested.

(2) In order to cooperate with the Small Business Administration in carrying out its responsibility of assisting small business concerns to obtain contracts for research and development, contracting officers, technical personnel and small business specialists shall, upon request, provide to authorized SBA representatives information necessary to understand the Government's needs concerning research and development programs under consideration for specific future procurement actions. Normally, this information shall be provided to SBA representatives assigned to a purchasing activity, as early as practicable, and shall cover the Government's requirements for each proposed research and development procurement exceeding $10,000. To the maximum extent feasible, SBA shall be afforded a minimum of 15 working days to provide pertinent information concerning qualified potential small business sources developed through its investigation of the capabilities of specific firms in the particular field of research and development covered by such procurements. Full evaluation shall be given to any such information in selecting qualified sources. Sources recommended by SBA for a specific procurement shall be solicited. Exception to the policy of providing SBA a minimum 15 working day interval to recommend additional qualified small research and development sources for a proposed procurement will be permitted only in those cases where the head of the purchasing activity or his designated representative advises the SBA representative that such action would result in unjustifiable delay.

(c) *Recommendations by Technical Personnel.* Recommendations as to which potential sources are technically qualified shall be made by cognizant technical personnel after review of the information obtained as a result of advance publicity (see 4-103), and, as appropriate, on the basis of discussion with potential sources (either singly or in a group), correspondence or suitable surveys.

(d) *Research and Development Pools.* See 1-302.3.

4-106.2 *Solicitation.*

(a) To reduce the number of technical proposals, the preparation of which can be both costly and wasteful of scientific or engineering manpower, contracting officers should request proposals only from sources which have been technically evaluated and found qualified to perform research or development in the specific field of science or technology involved. Where several sources are found fully qualified technically, proposals generally shall be solicited from each such source. Sources which become known as a result of synopses or other means of publicizing requirements shall be sent requests for proposals if such sources have been technically evaluated and determined reasonably qualified to perform, and possess the necessary security clearance. When a source not initially solicited requests a copy of a solicitation and such source has been technically evaluated within the past six months and determined not qualified, he may be so advised and his request denied. In the event such source has not been technically evaluated within the past six months a copy of the request for proposal shall be furnished but only after advice has been given to the source making the request as to the reasons for the limited solicitation and, as appropriate, the unlikelihood of any other source being able to qualify for a contract award under the circumstances. The formal solicitation process described above is not the only method of entering into contracts for research and development. The ongoing research and development work pursued in industrial laboratories is producing ideas and products of interest to the Government; this is especially true in the exploratory and advanced development segment of the research and development spectrum. In the R&D areas where there has been unique and significant industrial accomplishment by a specific concern, the establishment of specifications for solicitation of others may defeat the purpose of taking advantage of this industrial initiative. When a contractor has a new idea or product in the fields of exploratory development or advanced development there should be no hesitancy to discuss it with him, encourage him to submit a proposal, and to negotiate directly with him. Subject to 3–211, this can be done without a formal solicitation. Where there is no substantial question as to the choice of the source, as illustrated in (d) below solicitations may be limited to a single source.

(b) In soliciting proposals for the conduct of research and exploratory development, it may be desirable for the Government to furnish prospective contractors with certain information to elaborate on the proposed statement of work, permit optimum response by offerors, and allow more timely and comparable evaluation of proposals by the Government. This information normally should consist of the Government's estimate of the scientific and technical man-effort, or other reasonable indicators, it envisions when it is not possible to describe the magnitude of the proposed work to a sufficiently definitive degree. For example, the estimated effort may be expressed in terms of numbers of man-months or years in particular occupational categories. This technique may be appropriate in cases of contracts for research studies, investigations, or laboratory scale evaluations of feasibility where the Government desires to limit the scope of effort or depth of research. Where the degree of effort type of information is furnished, it should be made clear that such information is advisory only and is not cause for restricting what the contractor believes to be a meritorious technical proposal.

(c) In addition to (a) above, exploratory requests may be used to determine the existence of ideas or prior work in specific fields of research. However, the request for such information shall clearly state that it does not impose any obligation on the Government or signify a firm intention of the Government to enter into a contract.

(d) The following examples are illustrative of circumstances where there may be no substantial question as to choice of source:

(i) As a result of thorough technical evaluation, only one source is found fully qualified to perform the proposed work.

(ii) The purpose of the contract is to explore an unsolicited proposal which offers significant scientific or technological promise, represents the product of original thinking, and was submitted in confidence by one source.

(iii) Where the purpose of the contract is to take advantage of unique and significant industrial accomplishment by a specific concern, or to insure that a new product or idea of a specific concern is given financial support.

(e) In all procurements of research or development in which no small business source was solicited for a proposal, a statement shall be included in the solicitation file setting forth the reasons for not soliciting small business.

(f) Solicitations shall require offerors to identify technical uncertainties and to make specific proposals for their resolution.

(g) Solicitation and evaluation of proposals should be planned to minimize offerors' and Government expense.

4-106.3 *Conduct of Discussions*. See 3-805 and 4-107.

The contracting officer should make certain that each prospective contractor fully understands the details of the various phases of the Government's requirement, especially the statement of work. This may be best accomplished by conferences between a prospective contractor, the contracting officer, and appropriate technical personnel, particularly where there is doubt that a work statement is understood or will be interpreted correctly by prospective contractors.

4-106.4 *Evaluation for Award*.

(a) Generally, research and development contracts should be awarded to those organizations, including educational organizations, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research or development capabilities that exceed those needed for the successful performance of the work.

(b) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider the following:

(i) the contractor's understanding of the scope of the work as shown by the scientific or technical approach proposed;

(ii) availability and competence of experienced engineering, scientific, or other technical personnel;

(iii) availability, from any source, of necessary research, test, and production facilities;

(iv) experience or pertinent novel ideas in the specific branch of science or technology involved; and

(v) the contractor's willingness to devote his resources to the proposed work with appropriate diligence.

(c) In determining to whom the contract shall be awarded, the Contracting Officer shall consider not only technical competence, but also all other pertinent factors including management capabilities, cost controls, and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement. When a Small Business concern would otherwise be selected for award but is deemed not responsible because of lack of capacity or credit, see 1-705.4 for applicability of SBA Certificates of Competency. Proposals for cost reimbursement type or fixed price incentive contracts may be penalized during evaluation to the degree that the estimated cost is unrealistically low. The Contracting Officer shall notify those sources whose proposals or offers have been determined to be unacceptable of that decision in accordance with 3-508.

4-106.5 *Evaluation of Price and Costs.*

(a) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor. It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable but also to determine his understanding of the project and ability to organize and perform the contract. The most useful tools for this purpose are price analysis and cost analysis (see 3-807.2).

(b) Price analysis generally considers the overall reasonableness of the proposals in relation to the total contemplated expenditures and the extent and nature of the task scheduled to be accomplished. In most research and development contracts, the inability to define specifications and the nature of the end items prevent the effective use of certain techniques of price analysis, such as comparisons with prior quotations and current prices and evaluations in terms of quantitative yardsticks. The conclusions reached by price analysis techniques must be supported by cost analysis procedures, used to examine the details of the offerors' proposals.

(c) The analysis of cost factors begins with an evaluation of the reliability of the offeror's cost estimating procedures and the dependability of his cost controls, as demonstrated by his history of cost management in the performance of other contracts or by his establishment of sound practices for this purpose. The cost analysis proceeds with a critical examination of the composition of each cost element in terms of its expected application to the objectives of the contract, and its conformance to the accepted principles of allocability and reasonableness. (See Section XV, Part 3, and 15-201.) A Government cost estimate may help in projecting tools for these purposes and may develop the expected incidence of various cost factors in relation to performance phases, planned segments, or identifiable "milestones." This estimate should provide a summary forecast of the time, effort, materials, equipment, and services necessary to accomplish the research or development objective. The comparison and reconciliation of the Government cost estimate with the offeror's cost estimate for the same phases, segments, or events should bring into focus any areas of excessive or insufficient emphasis and provide a foundation for meaningful discussions with the offeror.

(d) Special care should be exercised to comply with 15-205.1 and 15-205.33 in the allowance of advertising costs under 15-309.1.

4-106.6 *Profit or Fee.* See 3-405.6(c)(2), 3-806, 3-807.9(d), and 3-808. |

4-106.7 *Documentation.* Contract files for research and development procurement shall be fully documented to include the basis and reasons for the

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selection of the sources solicited and for the award. Such documentation should be adequate to justify the selection of the contractor over others whose proposals, from the standpoint of some single factor (such as lower estimated costs or shorter performance time), might appear more advantageous to the Government (See 1-308.)

4-107 "Four-Step" Source Selection Procedures.

4-107.1 General.

(a) The Four-Step process, briefly described, is the (i) submission and evaluation of the offeror's technical proposal; (ii) submission and evaluation of the offeror's cost proposal; (iii) establishment of the competitive range and selection of the apparent successful offeror; and (iv) negotiation of a definitive contract.

(b) The conventional process differs in that (i) offerors' technical and cost proposals are submitted and evaluated simultaneously; (ii) definitive contracts are negotiated with all offerors in the competitive range; and (iii) the contractor is selected. One additional difference in the two processes involves discussion of proposal deficiencies. In the Four-Step process, deficiencies are not revealed to the individual offerors, while in the conventional process protracted discussions may evolve around proposal deficiencies.

(c) These procedures are applicable to all competitively negotiated research and development acquisitions in accordance with 4-107.2, .3 and .4. They are designed primarily to: focus attention on technical excellence, maintain the integrity of each offeror's proposal, provide visibility of discriminating features between proposals, reduce the opportunity for buy-ins, preclude the opportunity for the use of auctioning techniques and assure a disciplined and orderly process in the selection of sources. To this end, early and open dialogue, e.g., pre-solicitation notices and conferences, pre-proposal conferences, informal solicitations and the tailoring of specifications, is encouraged to establish a better understanding of the Government's needs.

(d) Following the technical evaluation and discussions, cost/price proposals are obtained from each offeror together with any necessary clarifications of technical proposals. Subsequent to the receipt of the cost/price proposals and any technical clarifications, a competitive range is established. Those proposals outside the competitive range are eliminated at this point and the offerors so notified. Limited discussions are then held with the remaining offerors on their cost/price proposals and any technical clarifications. Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified when it is determined to be no longer in the competitive range.

(e) At the completion of technical and cost/price discussions, a common cut-off date for the receipt of final technical and cost/price proposals based upon those discussions is then established and the remaining offerors so notified. An evaluation is then made of each offeror's total proposal and a single offeror is normally selected for negotiation of a contract (see 4-107.5(e)(7)). In order to release proposal teams at the earliest practical date, all offerors are notified of the contractor selected.

(f) A definitive contract is then negotiated with the selected offeror and contract award accomplished. These negotiations must be completed in a timely manner and must not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

4-107.2 Applicability. These procedures shall be used for all competitively negotiated research and development acquisitions except as provided in 4-107.3 or 4-107.4. They may, however, be used for any other acquisition when approved in accordance with Departmental procedures subject to the restrictions below. Acquisitions for which these procedures are not used shall follow the procedures of 3-805.

4-107.3 Exceptions and Restrictions.

(a) These procedures are not mandatory for R&D acquisitions which:

(i) involve the exploration or formulation of design concept(s) as defined in DoDD 5000.1; or

(ii) involve the selection of contractor(s) from among firms under contract for competitive hardware demonstration, validation, or full-scale engineering development.

(b) These procedures shall not be used for any acquisitions which:

(i) are negotiated pursuant to DAR 3-202;
(ii) are solely for personal or nonpersonal services;
(iii) are for architect-engineer services; or
(iv) have an estimated value of less than two million dollars.

4-107.4 Waiver. Waiver of the requirement for use of these procedures in the competitive acquisition of defense systems designated as major pursuant to DoDD 5000.1 may be granted by the Secretary of the Department involved. For all other acquisitions, waiver shall be granted in accordance with Departmental instructions.

4-107.5 Procedures. Acquisitions subject to this paragraph shall be conducted in accordance with the following procedures:

(a) Solicitations. Solicitations shall be developed in accordance with DAR 3-501 and shall include the following special requirements and instructions:

(1) A general statement explaining the concept and procedures to be used in the selection of a contractual source for the proposed acquisition.

(2) The relative importance of technical/system performance criteria.

(3) A notification that any proposals which are unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the proposed contractual requirements and may be grounds for the rejection of the proposal.

(4) A schedule of planned source selection events including, but not limited to, specific dates for the submission of both technical and cost/price proposals.

(5) Provisions requiring sequential submission of separate technical and cost/price proposals.

(6) Requirements for the technical proposal to include, where appropriate, identification of trade-offs among performance, production costs, operating and support costs, schedule and logistic support factors; and requirements for cost estimates

which illustrate the impact of these trade-offs. In addition, requirements for the technical proposal to include information necessary to indicate that the design to cost and operating and support cost objectives, when used, would be achieved when the item(s) enters production.

(7) Requirements for the cost proposal to include the detailed, substantiating cost information pertaining to the performance of the contemplated contract and other detailed data necessary for evaluation of cost factors to be considered in the source selection decision.

(8) A statement that both technical and cost/price discussions will be limited as set forth in (b) and (c) below.

(9) A notification that negotiations will be conducted only with the selected offeror, and that offerors should present their most favorable technical and cost/price proposals initially.

(b) Step One - Evaluation and Discussion of Technical Proposals. A detailed evaluation shall be accomplished on all technical proposals received based upon the established criteria in the solicitation. Upon completion of the initial evaluation, limited discussions shall be conducted with all offerors for the purpose of achieving maximum understanding and clarification of the contents of the proposal. During such discussions, offerors shall not be advised of deficiencies in their proposals. A deficiency is defined as that part of an offeror's proposal which would not satisfy the Government's requirements. Offerors shall be advised of areas of their proposal in which the intent or meaning is unclear or for which additional substantiating data is required for evaluation. When necessary for complete understanding of proposals, clarifications and/or additional substantiating data may be requested concerning those areas of an offeror's proposal when there is uncertainty that a deficiency exists. In most cases, clarification of proposals and additional substantiating data, if required, will be included by offerors with their cost/price proposals in Step Two. When it is apparent from the proposals received that the Government's requirements have been misinterpreted, clarification shall be provided to all offerors to ensure complete understanding.

(c) Step Two - Evaluation and Discussion of Cost/Price Proposals.

(1) Following the technical evaluation and discussions, complete, fully documented cost/price proposals and clarifications, if required, of technical proposals shall be obtained. Each proposal shall be evaluated and those which have no reasonable chance for award may be eliminated from the competition at this point and the offerors notified that they are outside the competitive range and will be given no further consideration.

(2) Limited discussions as indicated herein shall then be conducted with all remaining offerors in connection with their respective cost/price proposals, either on an element-by-element basis or in their entirety. These discussions may include (i) rectification and/or correction of inconsistencies or mathematical errors; (ii) correlation of elements of cost with their respective technical efforts, in order to assess the extent of realism in the cost proposal; and (iii) discussion necessary to ensure a complete understanding of the Government's requirements, what is being offered (including delivery schedules, trade-offs among performance, design to cost, life cycle cost, and logistics support factors) and other contract terms. An offeror shall not be advised during these discussions that its proposal or any of its elements are either too high or too low. When discussions of technical proposals are required they shall be limited as stated in (b) above.

(3) Following such discussions, a proposal may be eliminated from further consideration and the offeror so notified (i) when the proposal was initially included in the competitive range because it might have been susceptible of being made acceptable, or (ii) because there was uncertainty whether it was in the competitive range, and in either case, through discussions relating to ambiguities and omissions it becomes clear that the proposal should not have been included in the competitive range initially.

(d) Step Three - Common Cut-Off.

(1) A common cut-off date for receipt of technical and cost/price proposal clarifications or substantiations shall be established and all participants so notified in accordance with DAR 3-805.3.

(2) Offerors shall be informed that any changes incorporated in the final proposal must be fully substantiated. Supporting data must provide traceability to the causative technical, business, or financial conditions that brought about any change. Lump sum reductions in cost/price shall not be accepted without supporting rationale.

(3) After the common cut-off date, requirements shall not be imposed for additional proposals or revisions to submitted technical or cost proposals without the prior approval of an official at a level no lower than that of a Head of a Procuring Activity (HPA). Auctioning through repetitive calls for offers is strictly prohibited.

(4) Final detailed negotiations leading to the bilateral execution of a definitive contract shall be deferred until after the selection of an offeror for final contract negotiations.

(e) Selection of an Offeror for Final Contract Negotiations.

(1) Complete evaluation of all factors in accordance with the criteria set forth in the solicitation, including cost/fee or price, shall be conducted with careful regard for security procedures and good business practice.

(2) Based upon the offeror's latest total acceptable technical and cost proposals, selection of a single source shall be made for the conduct of final negotiations leading to a definitive contract. (This does not preclude selecting more than one source when multiple sources are desired; e.g., competitive prototypes.) Procedures for waiver of this requirement are at (7) below.

(3) Proposals unrealistic in terms of technical or schedule commitments or unrealistically low in cost or price will be deemed reflective of an inherent lack of technical competence or indicative of failure to comprehend the complexity and risks of the contract requirements and may be grounds for rejection of the proposal.

(4) The selection will be based on an integrated decision, involving consideration of technical approach, capability, management, design to cost, operating and support cost objectives, historical performance, price/cost and other factors.

(5) Following selection of the best offeror, all competitors shall be notified of the source to be awarded the contract, subject to negotiation of a satisfactory definitive contract.

(6) The source selection decision is conditional in that award of a fully negotiated contract to the selected offeror must be accomplished within a period of time prescribed by the source selection authority. In the event a definitive contract cannot be awarded on a timely basis, negotiations may be terminated and a new source selection decision made.

(7) Proposed contracts may be negotiated with two or more offerors within the competitive range, if the HPA makes a written determination that a final selection of a single source should not be made until such proposed contracts have been negotiated. Such determination shall not be made solely for the purpose of maintaining a competitive environment. However, such a determination may be based, for example, on unique situations where there are no significant discriminating technical or cost features between two or more offerors. Notification of such determination shall be provided to OUSD(R&E)(C&SA) through Departmental procedures.

(f) Step Four - Final Negotiations and Contract Award. Final negotiations leading to bilateral execution of a single definitive contract will be conducted only with the selected offeror except when multiple negotiations are authorized by the HPA. Final negotiations shall include the disclosure and resolution of all technical deficiencies and all unsubstantiated areas of cost. Negotiations shall not involve changes in the Government's requirements or the contractor's proposal which would affect the basis for source selection. In the event that such changes are necessary, the procedures in DAR 3-805.4 shall be followed. The final negotiated contract must represent a reasonable probability that the Government's requirements will be satisfied at a fair and reasonable cost/fee or price.

(g) Debriefings. Formal debriefings shall be conducted after contract award, in accordance with DAR 3-508.4.

4-108 Grants for Basic Research. Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense directives as implemented in Departmental procedures.

4-109 Recovery of Nonrecurring Research, Development, Test and Evaluation Costs. See section I, part 24, and 6-1306.

4-110 Cost-Sharing Policy.

4-110.1 *General.* Cost sharing under DoD contracts is encouraged in accordance with Federal Management Circular, FMC 73-3: "Cost Sharing on Federal Research," in the procurement of basic and applied

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research. This paragraph provides guidelines for participation by contractors, both profit and nonprofit, in the cost of research supported by DoD.

4–110.2 *Scope.*

(a) These guidelines are applicable to all research contracts.

(b) These guidelines need not be applied to development projects (*i.e.*, projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials, devices, systems or methods). However, contracting officers may apply some or all of these guidelines to development contracts.

4–110.3 *Cost Participation by Contractors.*

(a) Participation by contractors in the cost of conducting research projects is intended to serve the mutual interests of the DoD and the contractors by helping to assure efficient utilization of the resources available for the conduct of research projects and by promoting sound planning and prudent fiscal policies by contractors.

(b) Contractors shall be encouraged to contribute to the cost of performing research unless it is concluded that a request for cost sharing would not be appropriate because of any one of the following:

- (i) the particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;
- (ii) the research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or
- (iii) the contractor has little or no outside sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to make a cost contribution.

4–110.4 *Amount of Cost Sharing.* When cost sharing is required, the amount of cost participation by the contractor may vary in accordance with a number of factors relating to the contractor's organization (profit or nonprofit), and the character of the research effort. The amount of cost participation should reflect the mutual agreement of the parties. Factors which the contracting officers may consider in any negotiations with contractors regarding the amount of cost participation, include the following:

- (i) Cost participation by educational institutions and other not-for-profit or nonprofit contractors should normally be at least 1% of total contract cost. In many cases cost sharing of less than 5% of total project cost would be appropriate in view of the contractor's nonprofit status and limited ability to recover the cost of such participation from non-Federal sources. However, in some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(ii) The amount of cost participation by commercial contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise or competitive position, and the value of such enhancement to the contractor. It should be recognized that those contractors who are predominantly engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from their research under Government contracts. Therefore, cost participation by commercial contractors could reasonably range from as little as 1% or less of the total project cost, to more than 50% of total project cost.

(iii) If the contractor will not acquire title to or the right to use inventions, patents or technical information resulting from the research project, it would generally be appropriate to obtain less cost sharing than in cases in which the contractor acquires such rights.

(iv) A relatively low degree of cost sharing may be appropriate if, in the view of the contracting officer, an area of research requires special stimulus in the national interest.

(v) A fee or profit will usually not be paid if the contractor is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research. However, if the research is expected to be of only minor value to the contractor, it may be appropriate for the contractor to make a contribution in the form of a reduced fee or profit rather than sharing the costs of the contract.

4–110.5 *Administration.*

(a) Cost participation may be accomplished by a contribution to either direct or indirect costs, *provided* that such costs would otherwise be allowable in accordance with any cost principles applicable to the contract, and that the costs are not charged to the Government under any other grant or contract.

(b) The amount of cost participation by a contractor may be determined for each individual research contract or, if the contracting officer desires, for the aggregate of all or some of the contractor's research projects supported by DoD. When the amount of cost sharing is determined for individual projects, the contracting officer may consider the contractor's participation over the total term of the project so that a relatively high contribution in one year may be offset by a relatively low contribution in another year. If the amount of the contractor's cost sharing is to be determined for the aggregate of all or some of DoD's projects, relatively high contributions on some projects may be offset by relatively low contributions on other projects.

4–111 Special Use Allowances for Research Facilities Acquired by Educational Institutions.

(a) *Definitions.* As used in this paragraph:

(i) *special use allowance* means a negotiated direct or indirect allowance for buildings, structures, and real property, other than land, computed at an annual rate in excess of the rate which normally would be allowed under Part 3 of Section XV; and

(ii) *research facility* means real property, other than land, and includes structures, alterations, and improvements, acquired for the purpose of conducting scientific research under contracts with agencies of the Department of Defense.

(b) *Policy*. The expanding requirements of the Department of Defense for the performance of scientific research programs by educational institutions may create special situations wherein the acquisition or construction of additional research facilities by such institutions is essential for the effective performance of scientific research programs of major importance to the Department of Defense. Educational institutions are expected to furnish facilities required for the performance of Defense contracts, and the extent of reimbursement by the Government for the research programs of such institutions shall be governed by the principles set forth in Section XV, Part 3. However, in certain limited situations an educational institution may be unable to provide capital for new laboratories or other expanded facilities necessitated by Defense contracts unless the institution is given Governmental assistance in return for the risks and expenses it assumes in acquiring or constructing such facilities. Special use allowances constitute a means for recognizing these risks and expenses on the part of the educational institution and also provide a basis for permitting essential governmental research programs to go forward. The resort to special use allowances as provided by this 4-111 is an extraordinary type of arrangement and constitutes an exception to the provisions for normal use allowances contained in 15-309.10. Any specific agreement providing for a special use allowance shall be negotiated on a case-by-case basis using the criteria established herein.

(c) *Authorization of Special Use Allowances*. The Head of a Procuring Activity may approve special use allowances for the acquisition or construction costs of research facilities financed by educational institutions only when all of the following conditions are met:

(i) the research facility is essential to the performance of Department of Defense contracts;

(ii) the program requirements cannot be met practically and effectively by existing facilities, either Government or non-Government;

(iii) the proposed agreement for the special use allowances represents a sound business arrangement;

(iv) it is undesirable or impractical for the Government to provide Government-owned facilities for the performance of the research and

(v) the proposed use of the research facility is in consonance with the underlying objective of the Government in granting the special use allowance.

(d) *Negotiation and Administration of Contracts Providing for Special Use Allowances*. The negotiation and administration of contracts providing for special use allowances are subject to the conditions set forth in (i) through (xiii) below:

(i) The terms of the agreement for special use allowances authorized herein shall be specified or incorporated by reference in the applicable contracts.

(ii) When the special use allowance is based on the total acquisition cost, no normal use allowance or other use or depreciation charge will apply during the special allowance period nor after the educational institution has recovered the total acquisition cost under Government contracts or from other users. When the special use allowance is based on less than total acquisition cost of the research facility, the agreement will specify whether any normal use allowance or other use or depreciation charge will apply to the balance during the special use allowance period; however, no more than the normal use allowance computed in accordance with Part 3 of Section XV may be applied thereafter to the balance.

(iii) During the period of the special use allowance, and for subsequent periods to the extent agreed upon, the research facility shall be available for Government research use on a priority basis over non-Government use. Any significant use during such period other than that which justified the special use allowance shall be subject to prior consent of the cognizant approval authority specified in 4-111(c).

(iv) Special use allowances are applicable only in years in which the Government has contracts in effect with the educational institution for research to be conducted in the facility. The Government has no liability to the educational institution for the special use allowance in any year in which there is no Government contract. In any year when the level of research effort under Government contracts has been reduced to a point where the special use allowance is excessive in relation to the extent of the Government research funding, the parties may negotiate a special use allowance for that year at a mutually acceptable rate.

(v) When more than one Government contract is to be performed in the research facility, special use allowances generally should be allocated to using contracts on an equitable basis.

(vi) If during the period when a special use allowance is in effect, any substantial use is made of the research facility for parties other than the Government, only an allocable share of the special use allowance shall be charged to the Government.

(vii) Special use allowances shall not include any maintenance, utilities, or other operational costs.

(viii) Generally, the period for which a special use allowance is authorized shall be at least ten years. However, a shorter period of time is authorized where the total amount to be allowed is less than acquisition cost for the research facility.

(ix) Reimbursements under contracts for special use allowances shall not commence until the research facility is occupied and used for research under the contract. However, equitable adjustments may be made in the special use allowance during the construction period if the research facility is partially used for research under the contract.

(x) Determination of the amount of a special use allowance shall be based on the comparative need for the research facility by the Department of Defense and by the educational institution. In no event shall the institution be paid more than the acquisition costs.

(xi) In establishing the annual special use allowance, due consideration shall be given to rental costs for similar space in the area where the research facility is to be located.

(xii) No payment shall be made to the educational institution for costs of land or interest charges on capital, used or borrowed, for the acquisition of the research facility.

(xiii) Information copies of each special use allowance agreement negotiated shall be furnished to each authorizing official specified in (c) and to the Director of Defense Research and Engineering, Office of the Secretary of Defense.

4-112 Placing Subcontracts for Research and Development Effort. Since the selection of research or development contractors is based upon seeking the best scientific and technological sources, it is important that the contractor selected on this basis does not in turn subcontract technical or scientific work without prior approval of the contracting officer. The clause prescribed in 7-402.8, for cost-reimbursement type research and development contracts, requires prior written consent of the contracting officer for the placement of any subcontract which has experimental, developmental, or research work as one of its purposes. During the negotiation of the contract, it is imperative that the contracting officer obtain complete information concerning the contractor's plans for subcontracting any portion of the research or development effort. See 1-906, 3-807.9, and 23-201.2.

4-113 Scientific and Technical Reports.

(a) Scientific and Technical Reports are documents written for the permanent record to document results obtained from and recommendations made on scientific and technical activities relating to a single project, task, or contract or relating to a small group of closely connected efforts within the Department of Defense Research and Development Program. A completed Report Documentation Page (DD Form 1473) is to be included in each copy of a scientific or technical report required by the contract. (See 16-807.)

(b) Wherever a scientific or technical report is required as a product of the Research, Development, Test and Evaluation Effort, the contracting officer will assure that the requirement for a completed DD Form 1473 is clearly stated and that a complete DD Form 1473 is included with each copy of the required scientific and technical reports.

(c) Research and development contracts are required to contain appropriate data clauses as prescribed in Section IX, Part 2, which usually provide, among other things, for the reproduction and use for any purpose of the Government of any or all of the information to be provided under the contract. Contracting officers shall require contractors to furnish all such information resulting from research or development contracts. Scientific and technical reports should be reproduced as economically as practicable, consistent with the reporting needs of the Government.

(d) It is important that the results of research and development contracts be made readily available to Government activities, and to non-Government organizations and persons who have a need to know in accordance with procedures of the Departments. Copies of scientific and technical reports resulting from DoD contracts are furnished to the Defense Documentation Center which provides a central service for the interchange of scientific and technical information of value to the Department of Defense agencies and contractors. These elements may become eligible for such service by registering in accordance with the Defense Supply Agency Manual (DSAM) 4185.3, Registration for Scientific and Technical Information Services of the Department of Defense, available from the Defense Documentation Center, Cameron Station, Alexandria, Virginia 22314.

4–114 Data Under Research and Development Contracts.

(a) Research and development contracts shall specify the technical data to be delivered under the contract since the data clauses required by Section IX, Part 2, do not require the delivery of any such data.

(b) In planning a developmental procurement, when subsequent production contracts are contemplated, consideration should be given to the need and time required for obtaining a procurement package. The acquisition of rights to use data for procurement is covered by Section IX, Part 2. The term "procurement package" means plans, drawings, specifications and other descriptive information and data necessary to achieve competition in production contracts.

4–115 Insurance Under Research and Development Contracts. See Section X.

4–115.1 *Contractor Immunity From Liability for Torts.* In the case of cost-reimbursement type contracts where nonprofit educational institutions or other contractors do not carry insurance either because as charitable organizations they claim immunity from liability for torts or, in the case of state institutions, because the state law does not permit them to expend their funds for insurance premiums, the requirements of the Insurance-Liability clause, 7–203.22, may be modified to recognize a claim of partial immunity as provided in 7–402.26(a) or for a claim of total immunity as provided in 7–402.26(b).

4–115.2 *Indemnification Against Unusually Hazardous Risks.* Under the authority provided by 10 U.S.C. 2354, research and development contracts may specifically include language to indemnify contractors against liability on account of claims by third parties (including those of contractors' employees) for death, bodily injury, and loss of or damage to property, and for loss of or damage to the contractors' property, to the extent such liabilities arise out of the direct performance of the contract involved and from a risk defined in the contract as unusually hazardous. (See Section X, Part 7.)

4–116 Government Property Under Research and Development Contracts.

4–116.1 *General.* For research and development contracts with commercial organizations, the clauses relating to property furnished by the Government or acquired by the contractor at Government expense are in 7–104.24 or 7–203.21. Different clauses are prescribed for use in research and development contracts with educational or other nonprofit institutions. (See 7–303.7 and 7–402.25.) Required clauses for facilities use contracts are in 7–704, except that the clauses in 7–706 may be used in facilities use contracts with nonprofit educational institutions.

4-116.2 *Control of Government Property in Possession of Research and Development Contractors.* The basic requirements to be observed by the Departments for establishing and maintaining control over Government Property as set forth in Appendix B to this Regulation are applicable to research and development contracts except, in contracts with educational or other nonprofit organizations, Appendix C of this Regulation is applicable.

4-116.3 *Providing Government Production and Research Property.* See Section XIII, Part 3. Nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research may acquire and be reimbursed therefor the cost of any item of equipment costing less than $1,000 consistent with 15-303.4 and 15-309.13, subject to:

(i) prior approval of the contracting officer of the acquisition, either on a line item basis, or for clearly defined classes of items; and

(ii) a determination by the contracting officer that the proposed acquisition is essential to performance of the contract.

4-116.4 *Transfer of Title to Equipment to Nonprofit Educational or Research Institutions.*

(a) *General.* This paragraph 4-116.4 implements 42 U.S.C. 1892 which gives the Department of Defense discretionary authority to vest in nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, without further obligation to the Government or on such other terms and conditions as may be appropriate, title to equipment purchased with funds available for grants or contracts for the conduct of basic or applied research.

(b) *Purpose of the Legislation.* The general purpose of the legislation implemented by this paragraph is to facilitate the scientific research performed under contract for the Government by the nonprofit institutions and organizations described in (a). It is intended to permit the elimination of the record-keeping required when the Government retains title to equipment furnished or purchased under a research contract, in those cases where the cost of such record-keeping to the contractor or to the Government is out of proportion to the value of the equipment. It is further intended to reduce where desirable the time and labor involved in formally circulating through the Government long lists of highly specialized or minor items of equipment or in relocating major equipment when such relocation is impracticable or uneconomical and not required for other research programs of the Government. Finally, it is intended to provide a measure of administrative flexibility when, from the standpoint of increased research effectiveness and in the absence of other Departmental or Governmental requirements, it is desirable to transfer title to equipment to such research contractors.

(c) *Transfer of Title.*

(1) Contracts with nonprofit institutions of higher education or nonprofit organizations whose primary purpose is the conduct of scientific research, shall provide, or shall be amended to provide, for transfer to contractors of title to each item of equipment having an acquisition cost of less than $1,000 and purchased with funds available for contracts for the conduct of basic and applied research. Title to such equipment acquired pursuant to 4-116.3 above shall vest in the contractor upon acquisition or as soon thereafter as feasible. Title to such

equipment already in the possession of the contractor shall be vested in the contractor at the time of amendment of the appropriate contract or as soon as practicable thereafter. A list of all such equipment shall be provided to the contracting officer within ten days following the end of the calendar quarter in which the transfer of title occurs.

(2) With respect to equipment having an acquisition cost of $1,000 or more, contracts with such institutions shall provide that title to equipment purchased with funds available for the conduct of basic and applied research shall:

(i) vest in the institution upon acquisition or as soon thereafter as feasible without further obligation to the Government;

(ii) vest in the institution subject to a right of the Government to direct transfer of the title to the Government or a third party within twelve months after completion or termination of the particular contract. The contract shall further provide that the transfer of title back to the Government or third parties shall not be the basis for any claim by the institution, or

(iii) vest in the Government when it is determined that vesting of title in the institution under (i) or (ii) above would not be in furtherance of the objectives of the Department's research program. For items having an acquisition cost of $5,000 or less this determination may be made by the contracting officer; for items having an acquisition cost of more than $5,000, this determination must be made at a level higher than the contracting officer.

(3) When title to equipment is vested pursuant to (1) or (2) above, the contractor must agree, as a condition to taking title, that no charge will be made to the Government for any depreciation, amortization, or use charge with respect to such equipment under any existing or future Government contract or subcontract thereunder.

(4) Notwithstanding the provisions of 4–116.4(c)(1), (2) or (3) above relative to the transfer of title when the contractor is performing at a Government installation and there will be a continuing need for the equipment at that location following completion of the contract, title to such equipment need not be transferred to the contractor.

(d) *Requirement for a Letter of Assurance.* Vesting title to equipment pursuant to (c) above is subject to the provisions of the Civil Rights legislation (42 USC 2000d). Before title is vested, the contracting officer must insure that the contractor has furnished a Letter of Assurance to the Department of Defense that provides: "No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment)." Headquarters, Air Force Systems Command (AFSC), (PMPR), Andrews Air Force Base, Maryland 20334, is responsible in the Department of Defense for obtaining and maintaining files of Letters of Assurance from nonprofit institutions of higher education and other nonprofit institutions. AFSC(PMPR) will distribute, and periodically update, a list of institutions which furnished a Letter of Assurance. Contracting organizations may request a copy of this list; or at any time, inquire as to whether a particular institution has furnished the required Letter of Assurance. If transfer of title to equipment is contemplated and the contractor has not furnished a Letter of Assurance, the contracting officer will request, in writing, that AFSC(PPPR) obtain a Letter of Assurance from the contractor. This request must give the complete mailing address of the contractor.

4–117 Contractor Team Arrangements.

(a) *Definition.* A contractor team arrangement is one whereby two or more companies form a partnership or joint venture to act as a potential prime contractor or whereby a potential prime contractor agrees with one or more other companies to act as his subcontractor(s) under a specified Government procurement or program.

(b) *Policy.* There are times when it may be desirable, both from the Government and Industry standpoints, for companies to enter into a team arrangement prior to a Government contract award or thereafter. Team arrangements may be particularly appropriate for engineering and operational system developments, but may be used in other appropriate situations, including production procurement. Team arrangements allow a prime contractor and subcontractor to complement the unique capabilities of each and to offer the Government the best combination of capabilities to achieve the system performance, cost and delivery desired for the system being procured. The Government will recognize the integrity and validity of contractor team arrangements, *provided* they are identified and company relationships are stated in a proposal. Under a contractor team arrangement, the prime contractor is fully responsible for the performance of the contract. The Government normally will not require or encourage dissolution of contractor team arrangements. These policies do not authorize arrangements in violation of anti-trust statutes and do not limit the Government's rights to:

(i) approve subcontracts in accordance with ASPR requirements;

(ii) determine the responsibility of a prime contractor on the basis of the stated contractor team arrangement;

(iii) provide the selected prime contractor with data rights owned or controlled by the Government; and

(iv) pursue its policies on competitive procurement, subcontracting and component breakout, after initial production procurement or at any other time.

4–118 Contracts for Research With Educational Institutions and Nonprofit Organizations.

4–118.1 *General.* This paragraph implements Federal Management Circular 73–7, 19 December 1973, "Administration of Grants, Contracts or Other Agreements with Educational Institutions" and provides policies and procedures to be followed in contracting with educational institutions and nonprofit organizations for research effort.

4–118.2 *Contract Provisions.*

(a) When the course of the work is not defined precisely and specific points in time for achievement of results are not spelled out but the principal objectives of the research are stated, the following shall be provided for in the contract:

BEST DOCUMENT AVAILABLE

(1) that the institution will bear primary responsibility for the conduct of the research and will exercise judgment towards attaining the stated research objectives within the limits of contract's terms and conditions;

(2) the name(s) of the principal investigator(s) or project leader(s) when the decision to contract with a particular educational institution is based, to a considerable extent, upon his knowledge of the field of study and his capabilities to manage the research project in an efficient and productive manner. Further, that the named individual be continuously responsible for the conduct of the research project and be closely involved with the research efforts;

(3) a requirement that the institution obtain the contracting officer's approval to change the principal investigator or project leader, or to continue the research work during a continuous period in excess of three months without the participation of an approved principal investigator or project leader;

(4) the institution's estimate of the amount of the principal investigator's or project leader's time which will be devoted to the project;

(5) a requirement that the institution advise the contracting officer if the principal investigator or project leader will, or plans to, devote substantially less effort to the work than anticipated; and

(6) a requirement that the institution obtain the contracting officer's approval to change:

(i) the methodology or experiment when such is stated in the contract as a specific objective;

(ii) the stated objectives of the research effort;
or

(iii) the phenomenon or phenomena under study.

(b) When detailed objectives or goals are specified in advance by the Government or when the Government otherwise considers it necessary to exercise close control over the direction, specifications, methods or schedule; provisions set forth in (a) above Should be included whenever possible. However, such provisions should not be used when inconsistent with review or direction requirements.

4-118.3 *Advance Payments.* Whenever practical and authorized by law, advance payments in reasonable amounts shall be made under contracts for research with educational institutions (see Appendix E).

4-118.4 *Transfer of Title to Equipment to Educational Institutions.* The vesting of title to equipment in educational institutions furthers the overall Government objective of strengthening the scientific capability of such institutions. In addition, the Government's cost and administrative burden of accounting, shipment, storage, disposition, and otherwise treating the property as Government property are reduced or eliminated by vesting title in the institution. Therefore, the policies set forth in 4-116.4 shall be followed in determining when title to equipment shall be vested in educational institutions under research contracts.

4-118.5 *Basic Agreements with Educational Institutions and Nonprofit Organizatons.*

(a) Appropriate Basic Agreements will be negotiated with each educational institution and nonprofit organization, except designated Federal Contract Research Centers (FCRC), where the number of contracts with such institutions and organizations warrant an agreement. These Basic Agreements will be reviewed annually for currency. The responsibility for negotiating Basic Agreements with appropriate educational institutions and nonprofit organizations for DoD is assigned to the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia. Copies of the agreements will be maintained by the Office of Naval Research and provided to DoD and other purchasing activities upon their request. The Office of Naval Research will periodically provide a listing of current Basic Agreements to the ASPR Committee for publication in a Defense Procurement Circular.

(b) DoD activities shall obtain and utilize existing Basic Agreements to the maximum practical extent in contracts with educational institutions and nonprofit organizations. A special clause requirement may be incorporated into Section J - *Special Provisions* - of the standard contract format, whereas, the Basic Agreement is incorporated by reference in Section L *General Provisions*. Therefore, the need for special clauses should not preclude the purchasing office from utilizing these Basic Agreements.

(c) The General Services Administration will issue Federal Procurement Regulation Bulletins periodically which will list Basic Agreements issued by all agencies. The Bulletin will show the office from whom copies of the agreement can be obtained. DoD purchasing activities are encouraged to utilize Basic Agreements of other agencies where one has not been issued by the Office of Naval Research.

Part 2—RESERVED

[The next page is 4:29.]

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 3—Contracts With Requirements for Provisioned Items

4-300 Scope of Part. This Part sets forth contract requirements and procedures to be followed with respect to the provisioning process.

4-301 Definitions.

4-301.1 *Provisioned Item* means any support-type item selected through provisioning procedures to support an end item of equipment. Support-type items include (but are not limited to) spares, repair parts and special support equipment.

4-301.2 *Provisioning Activity* means that organization of a using Military Service, or that organization delegated by a using Service, which is responsible for the selection of, and the determination of requirements for, provisioned items.

4-301.3 *Provisioning Procedure* means the contract specification which sets forth the general requirements governing the acquisition of provisioned items and related documentation. It includes various optional provisioning techniques and formats for provisioning lists and data which the Government may elect to use on a particular contract. It also prescribes the sequence and timing of events to be followed and the responsibilities of the Government and the contractor in the provisioning process.

4-301.4 *Provisioning Requirements Statement* means the contractual document by which the Government notifies the contractor of the specific provisioning requirements selected from available options, as applicable to a particular contract. It normally includes instructions such as the provisioning method to be used; the range of provisioning technical documentation and data including the form and schedule of submission, number of copies and distribution instructions; the type and location of provisioning conferences; sample article requirements; the delivery schedule and packaging and marking requirements for provisioned items, and contractor requirements for provisioning screening.

4-301.5 *Provisioning Technical Documentation* means the documentation furnished by contractors to a provisioning activity for use in the identification, determination of initial requirements and cataloging of items to be procured. It generally includes (i) provisioning lists, (ii) priced spare parts lists, and (iii) EDP cards and tapes. Engineering drawings or sketches supported by item descriptions (which include technical characteristics) are referred to as supplementary provisioning technical documentation.

4-301.6 *Provisioned Items Order* means an unpriced order issued under a contract which sets forth the Government's requirements for provisioned items. (Provisioned items for which firm prices have been established are procured by supplemental agreement or by separate contract.)

4-302 Procurement Requirements.

4-302.1 *Contract Requirements.* Contracts which contain Provisioning Procedures shall specify the functions of the provisioning process to be performed under the contract and the activities responsible for performing these functions. Further, such contracts shall:

- (i) include a Provisioning Requirements Statement or specify a time (*e.g.*, days after award) for its incorporation in the contract by contract modification; revisions to the Provisioning Requirements Statement shall also be incorporated by contract modification;

(ii) provide on the DD Form 1423 a time schedule or milestones for the delivery of provisioning technical documentation or for the subsequent incorporation thereof in the contract by contract modification;

(iii) require a flow-down of the appropriate provisioning technical documentation requirement in subcontracts and purchase orders where the documentation is to be prepared by subcontractors;

(iv) specify, if applicable, procedures for contractor interim release of long lead time items and include ordering and funding instructions for such items (Such instructions shall require the contractor to advise the PCO or Provisioning Activity within 30 days as to the items released, their estimated cost and the effective date of release.);

(v) provide a time-frame for contractors to furnish price quotations for Provisioned Items Orders, which normally shall not exceed 60 days from receipt of the order;

(vi) specify exhibit identifiers applicable to the contract line/subline items (see 20-305);

(vii) specify the activity designated to issue Provisioned Items Orders, *i.e.*, PCO, Provisioning Activity or ACO (see 20-703.3) (When it is anticipated that more than one department will place Provisioned Items Orders against the contract, the requirements for provisioned items of each department shall be stated as separate contract line items.);

(viii) include procedures for processing changes in quantities of items ordered, including cancellations.

4-302.2 *Issuance of Provisioned Items Orders.* Provisioned Items Orders shall be issued on Standard Form 30, Amendment of Solicitation/Modification of Contract, and numbered in accordance with 20-204.3.

(a) The term PROVISIONED ITEMS ORDER, in capital letters and underscored, shall be entered in Block 12.

(b) The appropriate exhibit identifier(s) for all attached exhibits shall be entered in Block 12.

(c) The order shall obligate funds to cover the estimated price of the items being ordered. Individual estimated prices will be shown for each exhibit line item on the copy(ies) of the Provisioned Items Order to be provided to the accounting and payment office(s).

(d) The Provisioned Items Order, or other form of contract modification, shall be used to effect decreases in quantities of items ordered, including cancellation.

(e) Upon receipt of advice from the contractor, as provided in 4-302.1(iv), the contracting officer will normally within 30 days issue an order covering the interim released items or notify the contractor to cancel the items.

(f) Orders shall be given the same distribution as the basic contract (see 20-402) except that the distribution of voluminous spares/repair parts exhibits may be curtailed to the extent determined by the PCO and provided that the required copies, complete with exhibits, are forwarded to the Contract Administration Office and the payment office.

4-303 Contract Administration Requirements.

4-303.1 *Provisioning Conferences.* The PCO or Provisioning Activity shall give the Contract Administration Office (CAO) timely notice of conferences on provisioning matters. The CAO shall: (i) insure that the contractor understands the basic provisioning requirements of the contract and that all applicable publications are available to the contractor; (ii) coordinate, as necessary, with the contractor and the PCO or Provisioning Activity to determine the types of and schedules for provisioning conferences required, *e.g.*, guidance meetings, long lead time items conferences, source coding meetings, etc.; and (iii) assist, if required, in the development of conference agenda. When requested by the PCO or Provisioning Activity or when otherwise considered necessary for effective contract administration, the CAO shall be represented at provisioning conferences.

4-303.2 *Monitoring by the Contract Administration Office.* The CAO shall monitor each contract which contains requirements for provisioning technical documentation and provisioned items, as follows:

(i) prepare and maintain a check list of events in the provisioning process, including schedules for use in monitoring such events;

(ii) review contractor progress in the preparation of provisioning technical documentation and, on request of the PCO or Provisioning Activity, inspect such documentation for format and content;

(iii) insure that the contractor invokes the prime contract provisioning technical documentation requirements in subcontracts and purchase orders when the subcontractor is charged with preparation of any documentation;

(iv) advise the PCO or Provisioning Activity, in accordance with 25-203, of provisioning technical documentation delivery delays or other related problems;

(v) insure contractor compliance with contract requirements relative to the assignment of National Stock Numbers;

(vi) insure that the contractor adheres to the criteria established by the contract for the release of long lead time items.

4-303.3 *Negotiating and Executing Supplemental Agreements.* The ACO shall accomplish negotiation of prices and execution of supplemental agreements within 180 days after receipt of the Provisioned Items Order *provided* that, when time in excess of 60 days is allowed for submission of price quotations (see 4-302.1(v)), the 180 day period shall be adjusted accordingly. He also shall maintain records to reflect the status of Provisioned Items Orders as to (i) adequacy of obligated funds, (ii) due dates for price quotations, and (iii) actions taken to obtain additional funds or deobligate excess funds.

(a) In the process of negotiating prices, the ACO shall:

(i) determine the acceptability of pricing methods proposed by the contractor;

(ii) verify that items and quantities contained in proposals are identical to those ordered, clarifying, as appropriate, any variances with the PCO or Provisioning Activity; and

(iii) avail himself of data from similar contracts with the contractor, making use of audit records and information available from the PCO or

Provisioning Activity. Price negotiation policies and techniques set forth in Section III, Part 8, shall be followed, including the record of price negotiations required by 3-811.

(b) When delivery dates are not proposed by the PCO or Provisioning Activity or, when proposed delivery dates cannot be met by the contractor, the ACO shall coordinate the negotiated schedule with the PCO or Provisioning Activity prior to execution of the supplemental agreement.

(c) Supplemental Agreements shall be used to increase quantities of priced items and to definitize Provisioned Items Orders. Supplemental Agreements which definitize Provisioned Items Orders may incorporate multiple orders, or portions of orders when such action is not inconsistent with the provisions of the applicable contract.

Part 4—Rental of Motor Vehicles

4–400 Scope of Part. Procurement procedures peculiar to contracts for the rental of limousines, sedans, and station wagons from commercial concerns, with the driver provided by the Department of Defense, are set forth in this Part. Detailed procedures concerning the rental of motor vehicles are contained in "Joint Procedures for Management of Administrative Use Motor Vehicles" (AR 58–1; OPNAV P 44–2; AFM 77–1; MCO P11240.46; DSAR 4510.5). Contract clauses for the rental of motor vehicles are prescribed in Section VII, Part 15.

4–401 Type of Contract. Contracts for the rental of motor vehicles shall be of either a definite quantity or an indefinite quantity type, providing for payment on a flat rate basis or a combination of flat rate and mileage basis.

4–402 Limitation on Use. Contracts for the rental of vehicles are subject to the following limitations.

4–402.1 *Prestige Motor Vehicles.* Prestige motor vehicles (limousines, heavy sedans, and medium sedans) may be rented only for use in accordance with and subject to the approval required in the Joint Procedures for Management of Administrative Use Motor Vehicles.

4–402.2 *Authority To Rent Motor Vehicles.*

(a) Contracts for the rental of motor vehicles may be entered into by the contracting officer:

- (i) for periods not exceeding 30 days without regard to established allowances, when required to satisfy peak load, unusual, or emergency requirements. This authority shall not be used, however, to provide transportation for normal, routine requirements for which allowances have been established and vehicles provided;
- (ii) for periods not exceeding 90 days, within any 12 consecutive months, to provide transportation for normal, routine purposes to the extent Department of Defense owned vehicles have not been supplied to fill established allowances; and
- (iii) after prior approval as required in accordance with the Joint Procedures for Management of Administrative Use Motor Vehicles—
  - (A) for periods in excess of those specified in (i) and (ii) above; requests for approval shall include justification, number of vehicles by type, the total estimated contract cost, and the anticipated period of use; and
  - (B) for the rental of vehicles not in conformance with the body design, weight, equipment, accessories, or other features which would have been authorized if Department of Defense owned vehicles had been provided.

4–402.3 *Age of Vehicles.* Generally, solicitations shall not be limited to the current year's production models. However, with the prior approval of the Chief of the Purchasing Office, such solicitations may be limited to current models on the basis of overall economy.

4–403 Schedule Provisions. The Schedule of each solicitation or resulting contract shall set forth:

- (i) contract period;

(ii) scope of contract;
(iii) special payment provisions;
(iv) a listing of the number and types of vehicles being rented;
(v) rates applicable to each type of vehicle;
(vi) equipment and accessories to be provided with each vehicle;
(vii) a provision as to the furnishing of gasoline, motor oils, anti-freeze, etc.;
(viii) unless a prior determination has been made that it will be more economical for the Department of Defense to perform the work, a statement that the contractor shall perform all maintenance on the vehicles;
(ix) a statement as to pertinent state and local laws and regulations;
(x) the responsibilities of the parties in the event of the malfunctioning of the vehicles;
(xi) the responsibilities of the parties for emergency repairs and services; and
(xii) performance bonds, if required.

Part 5—Dismantling, Demolition or Removal of Improvements

4-500 Scope. Procurement procedures of special application to contracts for dismantling, demolition or removal of improvements are set forth in this Part.

4-501 General. A copy of the proposed contract for dismantling, demolition or removal of improvements consisting of the contract format in 16-502 and the applicable clauses in 7-2101 and 7-2102 shall be furnished to bidders with the invitations for bids.

4-502 Labor Provisions. The provisions of the Davis-Bacon Act relating to the predetermination of minimum wages for mechanics and laborers do not apply to contracts solely for dismantling, demolition or removal of improvements. The Service Contract Act is applicable to such contracts provided further work is not contemplated which will result in construction of a public building or public works at that location. If such further construction work, even though by separate contract, is intended, then the Davis-Bacon Act must be made applicable to such contracts.

4-503 Bonds or Other Security. The provisions of the Miller Act regarding performance and payment bonds do not apply to contracts for dismantling, demolition or removal of improvements. However, the contractor may be required to furnish a performance bond or other security in an amount deemed adequate to assure completion of the work and to protect the Government against damage to adjoining property during its performance, irrespective of the fact that complete payment under the contract may be made to the Government by the contractor prior to inception of the work. The amount shall be determined in advance of bidding and shall be set forth in the invitation for bids. If the contracting officer determines that it is in the best interest of the Government to require the contractor to furnish a performance bond or other security, the "*Bid Guarantee*" provision in 7-2003.25 and the "*Bonds or Other Security*" provision in 7-2003.73 shall be included in the invitation for bids.

4-504 Payment.

(a) The contract may provide for payment by the Government to the contractor for the dismantling or demolition of structures and conditioning of materials (see 7-2101.3(a)), or it may provide for payment of compensation by the contractor to the Government in consideration of the right to salvage and remove for his own use the materials resulting from the dismantling or demolition operation (see 7-2101.3(b)). The contracting officer should carefully consider the usefulness of salvageable property to the Government. Any items more useful to the Government than the value to the contractor as salvage should be expressly designated for retention by the Government. Title to any property not specifically designated for retention by the Government will vest in the contractor. The contracting officer shall determine the fair market value of the property title to which is to be vested in the contractor, since the value thereof will have a direct bearing upon the amount of money consideration, if any, that may be payable to the contractor and in determining whether further compensation may be made in the event of termination for convenience or for default.

(b) In special circumstances where it will be advantageous to the Government, the payment provision in 7-2101.3(b) may be modified to provide for payments by the contractor to the Government in increments and for transfer of title to the contractor for increments of property only upon receipt of such payments.

4-505 Termination. The termination for default and termination for convenience clauses in 7-2101.7 and 7-2101.8 provide specifically that title to property which under the terms of the contract is vested in the contractor is revested in the Government in the event of termination, except as to such property as the contractor has disposed of by bona fide sale or property which has been removed from the site by the contractor.

[The next page is 4:37.]

Part 6—Reserved

Part 7—Leader Company Procurement

4–701 General. Leader company procurement is an extraordinary procurement technique under which the developer or sole producer of an item or system (the leader company) furnishes manufacturing assistance and know-how or otherwise enables a follower company to become a source of supply for the item or system. This technique is used to accomplish one or more of the following objectives:

(i) shortening the time for delivery;
(ii) establishing additional sources of supply for reasons such as geographical dispersion or broadening the production base;
(iii) making maximum use of scarce tooling or special equipment;
(iv) achieving economy in production;
(v) assuring uniformity and reliability in equipment performance, compatibility or standardization of components, and interchangeability of parts;
(vi) eliminating problems in use of proprietary data not amenable to other more satisfactory solutions; or
(vii) effecting transition from development to production and to subsequent competitive procurement of end items or of major components.

4–702 Limitations on Use. Leader company procurement is to be used only when all of the following circumstances are present:

(i) the leader company possesses the necessary production know-how and is able to furnish the requisite assistance to the follower;
(ii) no source of supply (other than a leader company) would be able to meet the Government's requirements without the assistance of a leader company;
(iii) the assistance required of the leader company is limited to that which is essential to enable the follower company to produce the items; and
(iv) the Government reserves the right to approve contracts between the leader and follower companies.

4–703 Procedures.

(a) One procedure is to award a prime contract to an established source (leader company) in which the source is obligated to subcontract a designated portion of the total number of end items required to a specified subcontractor (follower company) and to assist the follower company in that production.

(b) A second procedure is to award a prime contract to the leader company for the requisite assistance to the follower company, and another prime contract to the follower company for production of the items.

(c) A third procedure is to award a prime contract to the follower company for the items, under which the follower company is obligated to subcontract with a designated leader company for the requisite assistance.

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 8—Paid Advertisements

4-800 Scope of Part. This Part sets forth procedures to be followed in placing paid advertising in media for (i) military and civilian personnel purposes, and (ii) proposed procurements.

4-801 Definitions. As used in this Part, the following terms have the meanings set forth below:

(i) "media" means any vehicle used to convey an advertising message; it includes newspapers, magazines, trade and professional journals, special printed media, radio and television;

(ii) "space" means the space purchased for advertising messages in printed media, and the time purchased for advertising messages on radio or television broadcasts;

(iii) "advertisement" means any single message prepared for insertion in media, regardless of the number of insertions;

(iv) "publication" means (A) the insertion of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed media; or (B) the broadcasting of an advertisement over radio or television; and

(v) "newspaper" means a publication printed and distributed at stated intervals to convey news and includes trade journals which carry news in addition to technical matter.

4-802 Authority and Delegation To Place Advertisements.

4-802.1 *Authority and Delegation.* Authority to approve the publication of paid advertisements in newspapers is vested by statute (44 U.S.C. 3702) in the Secretary of each Department. This authority may be delegated by the Secretary in writing, by position designation, to subordinates within his Department. The delegation shall specify the limitations, if any, of the authority granted. Administrative duties involved in accomplishing the advertising may be delegated in writing, personally signed by the delegate, setting forth the extent of the administrative duties involved. A copy of the instrument delegating authority to advertise and a copy of the instrument assigning administrative duties thereunder will either be attached to the first voucher submitted for payment or shall be forwarded immediately upon issuance to the General Accounting Office address to which records of the Department are submitted for audit purposes. When authority to advertise has been delegated by the Secretary of the Department concerned, a reference to the authorizing directive on the advertisement order is acceptable in lieu of attaching a copy of the authority to the payment voucher. Copies of such instruments also shall be attached to the duplicate voucher submitted to the paying office pursuant to 4-803.5.

4-802.2 *Request for Authority To Place Advertisement.*

(a) Special or general authority to place advertisements in newspapers must be secured in advance by the use of DD Form 1535, Request/Approval for Authority To Advertise (see 16-504). Special authority permits the publication of a given advertisement a specified number of times in designated newspapers. General authority permits the publication of such advertisements during a designated fiscal year as may be required.

(b) Requests for authority to place advertisements in newspapers shall be submitted through channels to the Secretary or his designee.

(c) Unless the Secretary of the Department concerned determines otherwise, DD Form 1535 is not required as authority to place advertisements in media other than newspapers.

4-803 Procedures.

4-803.1 *General.* Orders for paid advertisements may be placed either directly with the media or through an advertising agency (see 4-803.6).

4-803.2 *Rates.* Advertisements may be paid for at rates not to exceed the commercial rates charged to private individuals, with the usual discounts.

4-803.3 *Forms.* Orders placed directly with the media shall be issued on DD Form 1155, Order for Supplies or Services/Request for Quotations, if not in excess of $10,000; and on Standard Form 26, Award/Contract, if over that amount. Orders placed through an advertising agency under a basic ordering agreement shall be issued on DD Form 1155 regardless of amount. If for advertisements in newspapers, the date and number of the instrument of delegation or of assignment shall be put in Block 19 of DD Form 1155 or Block 16 of Standard Form 26; such information may be included for advertisements in other media.

4-803.4 *Proof of Publication.* Every invoice for official advertising shall be accompanied with a copy of the publication or advertisement (known as a "tear sheet") or an affidavit of publication made and furnished by the printer or publisher, by the radio or television station broadcasting the advertisement, or by the advertising agency concerned. Tear sheets or affidavits submitted as proof of publication shall be retained in the paying officer's files until settlement of his account by the General Accounting Office, after which they may be disposed of.

4-803.5 *Payment.* Upon receipt of the invoice, supported by a tear sheet or an affidavit of publication from the media or the advertising agency concerned, the officer placing the advertisement shall attach appropriate supporting documents, sign the certificate in Block 36 of DD Form 1155; or for orders over $10,000 (other than under a basic ordering agreement), make a similar certification on the second copy of the invoice; and submit the invoice in quadruplicate to the proper paying office for payment.

4-803.6 *Placing Advertising Through Advertising Agencies.*

(a) *General.* Basic ordering agreements may be entered into with advertising agencies to provide professional advertising services. The use of an advertising agency to assist in producing and placing effective advertisements may be advisable when a significant number of advertisements is to be placed in several publications and in national media.

(b) *Placing of Advertisements in Commissionable Media.* The services of advertising agencies in connection with the placing of advertisements in media often can be obtained at no additional cost to the Government over and above the space cost. This is because many media give advertising agencies a commission or discount (generally 15%) of the space cost, based on the standard card or other published rate. This commission or discount is not given to the Government. These services of the advertising agencies include but are not limited to counseling as to the selection of the media for insertion of the advertisement; contacting the media in the interest of the Government agency concerned; placing of insertion orders; selection and ordering of typography; copywriting; and preparation of rough layouts.

(c) *Placing of Advertisements in Noncommissionable Media*. Some media do not grant advertising agencies a commission or discount from the standard card or other published rates, with the result that the Government activity can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommissionable media as a no cost service to the Government, the basic ordering agreement shall so provide. If the advertising agency will not agree to place these advertisements at no cost to the Government, the agreement shall provide that the Government may place orders for advertisements directly with such media; or the agreement shall set forth an amount which the Government will pay the advertising agency for its services in placing the advertisements.

(d) *Art Work, Supplies and Incidentals*. The basic ordering agreement also may provide for the furnishing of art work, supplies and incidentals, including brochures and pamphlets but excluding the printing thereof, by the advertising agency upon the Government's priced or unpriced order. "Incidentals" may include expense for phone calls, telegrams, and postage incurred by the agency on behalf of the Government.

4-803.7 *Limitations*. No advertisement of a proposed procurement in a newspaper shall be published and printed in the District of Columbia unless the supplies or services are to be furnished for use, or the labor is to be performed, in the District of Columbia or in the adjoining counties of Maryland or Virginia. Paid advertisements of proposed procurements shall be placed only when it is anticipated that effective competition cannot be obtained otherwise. Paid advertisements to recruit civilian personnel shall be subject to the limitations in Section 332-1-9 of the Federal Personnel Manual.

SPECIAL TYPES AND METHODS OF PROCUREMENT

Part 9—Unsolicited Proposals

4-900 Scope of Part. This Part sets forth policies and procedures concerning the receipt, evaluation, and acceptance of unsolicited proposals.

4-901 General. The unsolicited proposal is a valuable means by which unique or innovative methods or approaches which have originated or developed outside the Government can be made available to Government agencies for use in the accomplishment of their missions. It is offered in the hope that the Government will enter into a contract with the offeror for (i) research on or development of, the methods, approaches, or ideas it contains, or (ii) the conduct of the activity or services or the delivery of the items it proposes. It should not be merely an advance proposal for a specific agency requirement which would normally be procured by competitive methods. An unsolicited proposal should be prepared independent of Government supervision. It often represents a substantial investment of time and effort by the offeror. It should present the proposed work in sufficient detail to allow a determination that Government support could be worthwhile and that the proposed work could enhance, benefit, and/or provide valuable input to an agency's research and development mission or to some other area of agency responsibility.

4-902 Policy. It is the policy of the Government to foster and encourage the submission of unsolicited proposals.

4-903 Agency Program Direction and Operation. Each agency shall adopt and publish policies and procedures which will encourage the submission of unsolicited proposals relating to the agency's mission. Such policies and procedures shall be consistent with the requirements of this Part 9. They shall be developed with an objective to eliminate restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals.

4-904 Definitions. As used in this Part 9, the following terms have the meanings stated.

(a) "*Unsolicited proposal*" means a written offer to perform a proposed task or effort, initiated and submitted to the Government by a prospective contractor (offeror) without a solicitation by the Government, with the objective of obtaining a contract. Advertising material, commercial product offerings, contributions, or technical correspondence as defined in paragraphs (b) through (e) below which are submitted to an agency shall not be considered to constitute unsolicited proposals within the intent of this Part 9.

(b) "*Advertising material*" means material designed to acquaint the Government with a prospective contractor's present off-the-shelf products or potential capabilities, or designed to determine the Government's interest in buying such products.

(c) "*Commercial product offering*" means offers of standard commercial products usually sold in substantial quantities to the general public and which the vendor wishes to see introduced in the Government's supply system as an alternate or replacement for an existing supply item.

(d) "*Contribution*" means concepts, suggestions, or merely ideas presented to the Government for its use, and with no indication on the part of the offeror that he will devote any further effort in relation to such concepts, suggestions, or ideas on behalf of the Government.

(e) "*Technical correspondence*" includes written inquiries regarding Government interest in research areas, preproposal explorations, technical inquiries, and research descriptions.

4-905 Advance Guidance. Organizations or individuals who are interested in submitting an unsolicited proposal should be encouraged, before expending extensive effort in preparing a detailed unsolicited proposal or submitting any proprietary information to the Government, to make preliminary inquiries as to the general need for the type of effort contemplated.

(a) Prior contact with agency technical personnel is permissible and should be encouraged with the limited objectives of conveying to the prospective offeror an understanding of the agency mission and needs relative to the type of effort contemplated.

(b) Departments shall make free written information available to potential offerors regarding policies and procedures for unsolicited proposals. As a minimum, the following information shall be made available to potential offerors:

(i) definition of an unsolicited proposal, consistent with that set forth in 4-904;

(ii) characteristics of a suitable proposal acceptable for formal evaluation, (also see 4-906 and 4-910);

(iii) requirements concerning—

responsible prospective contractors (see 1-900),
organizational conflicts of interest, and where applicable,
cost sharing (see 4-110);

(iv) the role of technical correspondence prior to proposal preparation;

(v) agency points of contact for information regarding advertising, contributions, bidders mailing lists, and other types of transactions frequently misconstrued as unsolicited proposals;

(vi) information regarding unsolicited proposal submission procedures;

(vii) information regarding evaluation procedures of the department or agency;

(viii) sources of information on department or agency objectives and areas of potential interest suitable for unsolicited proposal submissions;

(ix) instructions to the offeror that he identify proprietary information contained in his proposal, and that any restrictive legend appearing in his proposal shall not be more restrictive than the legend set forth in 3-507.1(a); and

(x) advice to the prospective offeror that an unsolicited proposal shall conform to the procedural and submission guidelines of the department or agency to which it is submitted.

(c) Personal contacts shall be conducted in a manner that will preclude agency commitments regarding acceptance of unsolicited proposals.

SPECIAL TYPES AND METHODS OF PROCUREMENT

4-906 Content of Unsolicited Proposals. Unsolicited proposals should contain the following information in order to permit consideration in an objective and timely manner.

(a) *Basic Information*. This includes:

(i) the name and address of the offeror (if an organization, indicate type, *e.g.*, profit, nonprofit, educational, small business);

(ii) names and telephone numbers of the offeror's technical and business personnel who may be contacted by the agency for evaluation or negotiation purposes;

(iii) identification of any proprietary data which the offeror intends to be used by the agency only for evaluation purposes (see 4-913);

(iv) names of any other Federal, State, local agencies, or other parties receiving the proposal and/or funding the proposed effort or activity;

(v) date of submission; and

(vi) signature of a responsible official or authorized representative of the organization or a person authorized to contractually obligate the organization.

(b) *Technical Information*. This includes:

(i) a concise title and an abstract (approximately 200 words) of the proposed effort;

(ii) a reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(iii) the names and brief biographical information of the offeror's key personnel (including alternates, if desired) who would be involved; and

(iv) the type of support, if any, the offeror requests of the agency, *e.g.*, facilities, equipment, materials, or personnel resources.

(c) *Supporting Information*. This includes:

(i) a proposed price or total estimated cost;

(ii) a cost estimate for the proposed effort sufficiently detailed by element of cost for meaningful evaluation;

(iii) the type of contract preferred;

(iv) period of time for which the proposal is valid (a minimum of six months is suggested);

(v) proposed duration of effort; and

(vi) statements, if applicable, regarding cost sharing, organizational conflicts of interest, security clearance status, and environmental impacts and brief descriptions of the organization, previous work or experience in the field of the proposal, and facilities to be utilized for the work, where appropriate for understanding the proposal.

4-907 Time of Submission. Unsolicited proposals should be submitted well in advance of the offeror's desired beginning of the proposed effort or activity in order to allow the agency sufficient time to evaluate the proposal and negotiate any resultant contract. Agencies may establish procedures governing the time for submission and number of copies of proposals for the purpose of maintaining orderly and efficient evaluation procedures.

4–908 Agency/Department Point of Contact. Each agency shall establish procedures within the agency to coordinate the receipt and handling of unsolicited proposals. Since the early involvement of procurement personnel is essential to the proper processing, evaluation, and possible contract award, agencies should consider designating their procurement activities for this purpose.

4–909 Receipt, Review, and Evaluation. Each agency shall establish uniform procedures that provide for the coordinated control of the receipt, evaluation, and disposition of proposals. Because of the sensitivity of the evaluation process, particular attention should be devoted to the conduct of evaluations. The procedures shall be consistent with the provisions of 4–909 through 4–913. Agency procedures shall also address reproduction (duplicating) and disposition of proposal material, particularly data which the offeror has identified as subject to duplication, use, and disclosure restrictions (see 4–913(a)).

(a) Unsolicited proposals shall be acknowledged as soon as possible by the office which has been assigned the coordination responsibility (see 4–908), and processed in an expeditious manner.

(b) Prior to making a comprehensive evaluation of an unsolicited proposal, the coordinating office (see 4–908) shall determine that the document:

(i) contains sufficient technical and cost information to permit a meaningful evaluation; and

(ii) has been approved by a responsible official or authorized representative of the organization submitting the proposal, or a person authorized to contractually obligate the organization.

(c) If the document does not meet the requirements in paragraph (b) above, the offeror shall be given the opportunity to provide the required data. A comprehensive evaluation of an unsolicited proposal need not be made if the proposal is not within the purview of the mission of the agency (also see 4–912(a)). In such cases, the submitter shall be furnished a prompt reply, stating how the document is being interpreted by the agency, the reason(s) for not evaluating it, and the disposition or intended disposition of the material submitted. The agency shall not deny reconsideration of a timely and appropriately revised or supplemented proposal which is responsive to such an initial agency determination.

(d) Comprehensive evaluations shall be coordinated by the organizational entity designated in accordance with 4–908. Each unsolicited proposal that is circulated for a comprehensive evaluation within the agency shall have attached or imprinted a legend identifying it as an unsolicited proposal, and stating that it shall be used only for purposes of evaluation (see 4–913(c)). In evaluating an unsolicited proposal, agency personnel shall consider in addition to any other criteria, the following:

(i) unique, innovative, or meritorious methods, approaches, or ideas which have originated with or are assembled together by the offeror that are contained in the proposed effort or activity;

(ii) overall scientific, technical, or socio-economic merits of the proposed effort or activity;

(iii) potential contribution which the proposed effort is expected to make to the agency's specific mission, if pursued at this time;

(iv) capabilities, related experience, facilities, or techniques, or unique combinations thereof which the offeror possesses and offers, and which are considered to be integral factors for achieving the scientific, technical, or socio-economic objective(s) of the proposal; and

(v) qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are considered to be critical in achieving the objectives of the proposal.

(e) Upon completion of the comprehensive evaluation of an unsolicited proposal, agency evaluation personnel shall, in accordance with agency procedures, notify the coordinating office (see 4-908) of their conclusions together with recommendations for further action.

4-910 Method of Procurement.

(a) A favorable comprehensive evaluation of an unsolicited proposal is not, in itself, sufficient justification for negotiating on a noncompetitive basis with the offeror. When a document qualifies as an unsolicited proposal (see 4-904(a) and 4-909(b)) but the substance (i) is available to the Government without restriction from another source, or (ii) closely resembles that of a pending competitive solicitation, or (iii) is otherwise not sufficiently unique to justify acceptance (see 4-909(b)), the unsolicited proposal shall not be acceptable. When procurement is intended and competition is feasible, the proposal shall be returned to the offeror together with the reasons for the return (see 4-909(e)).

(b) A negotiated, noncompetitive procurement is permissible when an unsolicited proposal has received a favorable technical evaluation, unless it is determined that the substance thereof is available to the Government without restriction from another source, or a competitive procurement is otherwise appropriate. The agency technical office sponsoring the procurement shall support its recommendation with a justification for noncompetitive procurement. The justification shall be based on a comprehensive evaluation of the proposal. The justification shall include the facts and circumstances that operate to preclude competition and that support the recommended noncompetitive action. Consideration shall include the evaluation factors listed in 4-909(d).

(c) When it is determined that the subject matter of an unsolicited proposal is acceptable for award on a noncompetitive basis, the unsolicited proposal will serve as the basis for negotiation.

4-911 Prohibitions. Agencies shall not permit all or any part of an unsolicited proposal to be used as the basis, or portion of, a solicitation, or in negotiation with other firms unless the offeror is notified of and agrees to the intended use. However, nothing herein precludes the Government from using any data, concept or idea which it could have used had the unsolicited proposal not been submitted. With respect to data (see 4-913(a)) tendered in an unsolicited proposal, disclosure of information which concerns or relates to trade secrets, processes, operations, style of work, or apparatus, and other matters may result in the imposition of a criminal penalty pursuant to the provisions of 18 U.S.C. 1905.

4-912 Interagency Coordination. When it is determined that a meritorious unsolicited proposal is not related to the mission of the recipient agency or may be of interest to other agencies in addition to the recipient agency, the recipient agency may identify for the offeror other agencies whose missions bear a relationship to the subject matter of the unsolicited proposal.

4-913 Limited Use of Data.

(a) The submitter of an unsolicited proposal may mark it with a legend, such as that provided in 3-507.1(a), restricting the disclosure and use of data in the proposal. If a proposal is so marked, the terms of the legend shall be complied with.

(b) If the contracting officer receives an unsolicited proposal marked with a more restricted legend than that provided in 3-507.1(a), then he shall immediately return the proposal to the submitter with a letter stating that the proposal cannot be considered because it is impracticable for the Government to comply with the legend (and pointing out specifically why this is so), but that the proposal will be considered if it is resubmitted with a satisfactorily revised legend or with the legend provided in 3-507.1(a).

(c) Except as provided in paragraphs (d) or (e) below, the coordinating office (see 4-908) shall place a cover sheet on the proposal or the proposal shall be otherwise clearly marked as follows unless the offeror gives a clear written indication that he does not wish to impose any restrictions on the disclosure or use of the data contained in the proposal.

UNSOLICITED PROPOSAL
USE OF DATA LIMITED

All Government personnel handling this proposal shall exercise EXTREME CARE to insure that the information contained herein is NOT DISCLOSED outside the Government and is NOT DUPLICATED, USED, OR DISCLOSED in whole or in part for any purpose other than to evaluate the proposal, without the written permission of the offeror (except that if a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use).

This notice does not limit the Government's right to use information contained in the proposal if it is obtainable from another source without restriction.

This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for any disclosure or use of data contained in this proposal.

(d) If an unsolicited proposal is received without any restrictive legend from an educational or nonprofit organization or institution and it is necessary or appropriate to obtain an evaluation of the proposal outside the Government by leading scientists or other preeminent experts, to ascertain the merits of the proposal, a cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the legend set forth in paragraph (c) above, modified by changing the first two words to read "*All Government and non-Government*" and by deleting the words "*is not disclosed outside the Government and*". A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government. If the proposal is received with the restrictive legend referred to in paragraph (a) of this 4-913, the modified cover sheet shall also be used and permission shall be obtained from the offeror, prior to release, for the release of the proposal for outside evaluation.

(e) If an unsolicited proposal is received from other than an educational or nonprofit organization or institution, irrespective of whether it contains a restrictive legend, and it is necessary or appropriate to obtain an evaluation of the proposal by Government personnel outside the agency and/or by leading scientists or preeminent experts outside the Government, written permission shall be obtained from the offeror prior to release of the proposal for such evaluation. A cover sheet shall be placed on the proposal or the proposal shall be clearly marked with the notice set forth in paragraph (c) above or as modified in accordance with paragraph (d) above, if appropriate. A written agreement shall be obtained from any non-Government evaluator that the evaluator will not disclose information in the proposal outside the Government.

Part 10—RESERVED

This Part reserved pending approval of a test of the Short Form Research Contract (SFRC). (See Item XVI, DAC #76-27, dated 15 May 1981.

Part 11—Automatic Data Processing (ADP) Contracting

4-1100 Scope of Part. This Part sets forth policies and procedures for the contracting by the Department of Defense of automatic data processing equipment, software, maintenance services, certain other contractual ADP support services, and supplies as defined in 4-1102. In addition, 4-1104.13(c) identifies policies and procedures related to reporting requirements for excess ADP equipment in the possession of contractors.

4-1101 Policy.

(a) Public Law 89-306, 40 USC 759, authorizes and directs the Administrator of General Services to provide for the economic and efficient purchase, lease, and maintenance of automatic data processing equipment (ADPE) by Federal agencies subject to fiscal and policy control of the Office of Management and Budget (OMB). The statute specifically provides that the authority conferred upon the Administrator of General Services shall not be construed as to impair or interfere with the determination by agencies of their individual requirements or the use made of ADPE or components thereof by any agency. Under this authority, the General Services Administration (GSA) has promulgated regulations pertaining to the availability of Federal sharing and reutilization of ADP resources, and for the contracting for Government-wide automatic data processing equipment, software, maintenance services and supplies.

(b) The OSD and Departments, in turn, have issued regulations regarding the selection, acquisition, and reutilization of requirements for ADP equipment, software, maintenance services, certain other contractual ADP support services, and supplies. These regulations establish the selection and acquisition approvals that are required before contracting actions can be initiated.

(c) The GSA authority set forth in 4-1101(a) does not extend to—

(1) ADP equipment, specifically designed (not configured) and/or physically incorporated as a part of a tactical weapon or space system.

(2) Items especially designed or manufactured for the Government under a development contract.

(3) Software specifically developed for (1) and (2) above.

(4) Contractor-acquired ADP items unless:
- (i) leased and full lease costs are paid by the Government under one or more ADP service contracts, or
- (ii) purchased by an ADP service contractor for the account of the Government or for which title will pass to the Government.

(5) Any contractual ADP support services as defined in 4-1102.

(d) In addition, the GSA has established through regulation, blanket delegations of authority, as set forth in 4-1103.1(b), for DoD to contract for ADP. These blanket delegations of authority do not require an agency procurement request (APR) (see 4-1102.3) or a specific GSA delegation of procurement authority (DPA) (see 4-1102.7).

4-1102 Definitions. The following definitions apply only to the contracting for automatic data processing equipment, software, maintenance services, contractual ADP support services and supplies for the DoD as set forth in this Part and elsewhere in the DAR.

4-1102.1 *Automatic Data Processing Equipment (ADPE).* General purpose, commercially available, mass-produced automatic data processing components and the equipment systems created from them, regardless of use, size, capacity or price, that are designed to be applied to the solution or processing of a variety of problems or applications and are not specially designed (rather than configured) for any specific application. This definition includes:

(a) Digital, analog, or hybrid computer equipment; and/or

(b) Auxiliary or accessorial equipment such as plotters, communications terminals, tape cleaners, tape testers, data conversion equipment, source data automation recording equipment (optical character recognition devices, paper tape typewriters, magnetic tape cartridge typewriters, and other data acquisition devices), etc., to be used in support of digital, analog, or hybrid computer equipment either cable connected, wire connected, or self-standing, and whether selected or acquired with a computer or separately; and/or

(c) Punched card accounting machines (PCAM) used in conjunction with or independently of digital, analog, or hybrid computers.

4-1102.2 *Contractual ADP Support Services.* All services excluding hardware maintenance, timesharing services and systems software support, but including systems analysis, programming, software and/or data conversion, service bureau, teleprocessing, and other nonpersonal services.

4-1102.3 *Agency Procurement Request (APR).* A request by a DoD Component for GSA to contract for ADPE, software, or maintenance services, or for GSA to delegate the authority to contract for these items. It includes the applicable Request for Proposals (RFP), Invitation for Bids (IFB), or Request for Quotations (RFQ), and amendments thereto, and other pertinent information regarding the proposed contract. When the APR is submitted before preparation of the solicitation, the data systems specifications and/or the equipment performance requirements, as available, and the attendant software requirements may be provided in lieu of the RFP, IFB, or RFQ. In such instances, the software requirements shall include the software as defined in 4-1102.14 below, software in the public domain, and any additional software. However, applications programs to be developed either inhouse or by contract shall not be included in the APR.

4-1102.4 *Reserved.*

4-1102.5 *Competitive Contracting.* Competitive contracting means that the Government's requirements are set forth in the form of data systems specifications or equipment performance requirements, a combination thereof, or other unrestrictive specifications which allow full competition and are devoid of bias toward either a specific product or a specific offeror.

4-1102.6 *Data Systems Specifications.*

(a) The delineation of the objectives which the system is intended to accomplish; and

(b) The data processing requirements underlying that accomplishment. The latter includes a description of the data output and its intended uses, the data input, the data files, and record content, the volumes of data, the processing frequencies, timing, and such other facts as may be necessary to provide for a full description of the system.

4-1102.7 *Delegation of Procurement Authority (DPA).* A written notification from GSA to a DoD Component granting authority to contract for ADPE, software, or maintenenace services beyond the thresholds established in 4-1103.1(b).

4-1102.8 *Desirable Features.* Those contractual conditions and technical specifications which are established by the Government but which do not have to be offered in order to be responsive to the specific solicitation. When set forth in a solicitation, the desirable features, individually or collectively, may be offered at the discretion of the offeror.

4-1102.9 *Equipment Performance Requirements.* A statement of those hardware factors such as cycle time, computing speed, tape read or write speed, printer speed, size of memory, expandability (modularity), and related software, which are a measure of the operating capability of equipment and which, when applied to the data systems specifications, provide a measure of the operating time required to process the applications involved in that equipment.

4-1102.10 *Lowest Overall Cost.* The least expenditure of funds over the systems or items life, price and other factors considered. Lowest overall cost shall include but shall not be limited to such elements as personnel, purchase price or rental, maintenance, site preparation and installation, programming, training, and telecommunications, as applicable.

4-1102.11 *Maintenance Services.* Those examination, testing, repair, or part replacement functions performed to:

(a) Reduce the probability of ADPE malfunction (commonly referred to as "preventive maintenance");

(b) Restore a component of ADPE which is not functioning properly to its proper operating status (commonly referred to as "remedial maintenance"); and

(c) Modify the ADPE in a minor way (commonly referred to as "field engineering change" or "field modifications").

4-1102.12 *Mandatory Requirements.* Those contractual conditions and technical specifications which are established by the Government as being the minimum requirements for the Government. When set forth in a solicitation, the mandatory requirements must be met by an offer in order for such offer to be considered responsive to the solicitation.

4-1102.13 *Noncompetitive Procurement.* A noncompetitive procurement ("sole source procurement") means that the Government's requirements are set forth in the form of necessary specifications which are so restrictive that there is only one known supplier capable of satisfying the Government's requirement. Contracts based on specific make and model specifications/purchase descriptions fall in this category, notwithstanding the existence of adequate price competition.

4-1102.14 *Software.* Commercially available proprietary computer programs and routines used to extend the capabilities of ADPE. This category of software includes those software packages available in the commercial market through lease or purchase. Software packages provided by original equipment manufacturers which are separately priced from ADPE are included in this category.

4-1102.15 *Supplies.* Consumable items designed specifically for use with ADPE, such as computer tape, ribbons, punch cards, and tabulating paper.

4-1102.16 *Systems or Items Life.* A forecast or projection of the period of time which begins with the installation of the systems or items, and ends when the need for such systems or items has terminated. Systems or items life is established by the Government on the basis of requirements and is usually set forth in the solicitation. Systems or items life is not synonymous with actual life of the equipment.

4-1102.17 *Tactical Weapons Systems.* For the purpose of this Part, tactical weapons system is defined as an instrument of combat, either offensive or defensive, used to destroy, injure or threaten the enemy. It consists of the total entity that is an instrument of combat which may incorporate in itself a complex assembly of functional parts; e.g., F-15 aircraft, FBM submarine, M60 tank, Minuteman Missile.

4-1103 Procurement Authority. This paragraph prescribes the conditions under which ADP procurement authority is vested in the General Services Administration or the Department of Defense.

4-1103.1 *General Services Administration (GSA).* The GSA has the exclusive authority to provide for the contracting for automatic data processing equipment, software, maintenance service, supplies, and certain other contractual ADP support services, as defined in 4-1102, unless the contract is within the exceptions set forth in 4-1101(c). Consequently, unless the acquisition is within such exceptions, the provisions of the GSA regulations shall apply in the event of conflict with this Part.

(a) Delegation of Procurement Authority (DPA). When a requirement exists for ADPE, software, or maintenance services, as defined in 4-1102, an Agency Procurement Request (APR) must be submitted to the GSA prior to the initiation of any contract action, unless the requirement meets the exceptions set forth below. In response to an APR, the GSA may contract or issue a DPA. For the procedures to be followed in submitting the APR, see 4-1104.1.

(b) Exceptions. ADP contracts may be made without the prior approval of the GSA under the following conditions:

(1) Automatic Data Processing Equipment. Except for contracts involving the GSA ADP Fund (see 4-1104.14), excess leased ADPE or the acquisition of hardware monitors for measuring computer system performance, DoD may contract for ADPE without prior approval of GSA, *provided* that at least one of the following conditions is met.

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against a GSA schedule contract, *provided* that:

a. the order is placed under the terms and conditions of the contract;

b. the order is within the maximum order limitation (MOL) of the applicable contract;

c. when an ADTS/ADP schedule contract is utilized, the total purchase price of the item(s) covered by the order does not exceed $300,000 (Note: Even though the item(s) are to be rented or leased, the purchase price shall be used to determine if the dollar value of the order falls within the $300,000 threshold); and

d. the requirements set forth in 4-1104.4 on the use of GSA schedule contracts for ADP are met; or

(iii) the value of the contract does not exceed:

a. $300,000 purchase price or $7,500 basic monthly rental charges for competitive procurement; or

b. $50,000 purchase price or $1,500 basic monthly rental charges for noncompetitive procurements.

(2) Software. Except for software available through the Federal Software Exchange Center (FSEC), DoD may contract for software, including software performance monitoring packages, for use with ADPE without approval of GSA or the Federal Computer Performance Evaluation and Simulation Center (FEDSIM), *provided* that at least one of the following conditions is met:

(i) the contract will occur by placing a delivery order against an applicable GSA requirements contract;

(ii) the contract will occur by placing a delivery order against an applicable nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract;

(iii) the total value of the contract for the specific software package(s) does not exceed $10,000 annual lease charges, excluding maintenance, or $10,000 purchase price; or

(iv) the software is provided by the original equipment manufacturer and is not separately priced from the ADPE.

(3) Maintenance Services. The DoD may contract for maintenance services without approval of GSA when:

(i) such services are available from a nonmandatory ADTS/ADP Schedule contract under the terms and conditions of that contract; or

(ii) the maintenance charges do not exceed $100,000 annually for a fully competitive procurement, or $50,000 annually for a sole source procurement.

4-1103.2 *Department of Defense (DoD).* The DoD has authority to contract for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services covered in 4-1101(c)(1) through (5). Additionally, the DoD has the authority to obtain ADP resources outside the scope of definitions provided in 4-1102.

4-1104 Contracting Procedures. This paragraph sets forth the procedures for performing ADP contracting when procurement authority is vested in the GSA. Prior to issuance of the solicitation, the contracting officer shall insure that the delegation of procurement authority has been obtained.

BEST DOCUMENT AVAILABLE

4-1104.1 *General.*

(a) Contracts requiring GSA approval shall be initiated by the submission of 4 copies of the agency procurement request (APR) and other applicable documents to the General Services Administration (CDS), Washington, D. C. 20405. The APR shall contain the name and telephone number of an individual within the DoD component who shall act as the point of contact with GSA. The APR shall include:

(1) Copies of the proposed solicitation, if available. If the solicitation document is not available, the specifications of the ADPE configuration that is to be acquired shall be included. The description should reflect the estimated number of central processing units, storage devices and controllers, terminals, other peripheral devices and communications devices.

(2) Estimated dollar value of the contract.

(3) Estimated system or item life.

(4) Location (city and state) of the data processing facilities involved.

(5) Fiscal quarter during which the solicitation is expected to be released to industry for contract action.

(6) Unique software, maintenance and support requirements, if any.

(7) A statement or other evidence which indicates that a performance evaluation has been made of currently installed ADP system(s), when applicable, to ensure that the proposed contract represents the lowest overall cost alternative for meeting the agency's data processing needs.

(8) Evidence that site construction/modification is, or is not, required. One of the following statements shall be used for this purpose:

(i) *The acquisition of this equipment will not require site construction or modification by GSA;* or

(ii) *The acquisition of this equipment will require construction or modification by GSA which must be completed by (date).*

(9) A statement that the need to acquire ADPE or ADP systems has been documented as required by Federal Property Management Regulations 101-35.2.

(10) A statement that ADP resources available from the sharing and reutilization programs have been screened and no ADP resources are available to satisfy the user's requirements.

(11) A justification, if applicable, to support either a contemplated noncompetitive acquisition or use of a specific make and model purchase description. This justification must address:

(i) the intended use or application of the equipment;

(ii) the critical installation schedule(s) or unique features and/or mandatory requirements, dictated by the intended use, that limit the acquisition to one source of supply or a specific make and model (the overriding necessity of these competition-limiting requirements shall be clearly identified);

(iii) the fact that no other known or probable source of supply exists for the required equipment, if a sole source procurement is contemplated (the justification also shall elaborate on the steps taken which led to this conclusion);

(iv) the existence of patent, copyright, or other limitations; and

(v) the practical factors which preclude the development of specifications and/or the requirement for competition.

(12) The ADP and Telecommunications Requirements checklist as prescribed by OSD and Department regulations.

(b) In response to an APR, GSA will either:

(1) Delegate to the DoD authority to contract;

(2) Delegate to the DoD the authority to contract and provide for GSA participation in the contracting to the extent deemed necessary under the circumstances; or

(3) Provide for the contracting by GSA, or otherwise obtain the requirement on behalf of the DoD.

(c) A copy of the APR and the GSA response shall be made a part of the contract file.

(d) When the DoD is authorized to contract for ADPE, software, ADPE maintenance services, and certain other contractual ADP support services, 2 copies of the solicitation and any subsequent amendments thereto that change the specifications, evaluation criteria, or installation date, shall be forwarded to the

General Services Administration (CDS), Washington, D. C. 20405 as soon as available, but in no event shall the documents arrive later than 8 workdays before the proposed date of issuance to industry. GSA will notify DoD of the date of receipt of the solicitation as soon as it is received. However, if timely issuance of the solicitation is critical to the DoD component mission accomplishments, copies of the solicitation may be forwarded to GSA concurrently with issuance to the industry, provided the specifications have been previously reviewed by industry and the resultant comments evaluated. Amendments to all solicitations which are clearly administrative in nature, or are for clarification purposes, need not be forwarded to GSA until the dates the amendments are sent to industry. In addition, one copy of all contracts and subsequent modifications thereto shall be forwarded to GSA when they are issued. Also, a list of commercial prices shall be forwarded for each separately identified and priced component, special feature, and software package included in the contract that is not listed on an ADP Schedule contract of the vendor selected.

(e) When GSA acquires ADPE or related items for DoD, the contracting is a joint endeavor. In this case DoD shall:

(1) Submit documentation to include the DoD requirements, systems or items life, the technical specification, and justification to support negotiated contracting;

(2) Prepare the technical portion of the solicitation and define any unique requirements;

(3) Provide necessary technical personnel (and contracting personnel, if desired) as members of the contract negotiating team;

(4) Prepare a selection plan and submit it to the GSA contracting officer prior to issuance of the solicitation;

(5) Evaluate proposals from a technical point of view and arrange for offerors' oral presentations, when appropriate;

(6) Provide copies of correspondence to the GSA contracting officer when authorized to communicate directly with offerors;

(7) Determine the technical capability of the items offered to meet the requiring activity's requirements, technical specifications, and systems or items life. This responsibility shall include the determination of whether proposals are technically acceptable or unacceptable. The results of these determinations shall be transmitted to the GSA contracting officer to enable the contracting officer to take appropriate action with the offerors;

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(8) Select the lowest overall cost item(s) and transmit this information with the necessary supporting documentation to the GSA contracting officer. In the event a conclusive judgment cannot be made on the basis of lowest overall cost, a determination and findings to this effect shall be prepared before any other factors are used as a basis for selection;

(9) Provide the following administrative information to the GSA contracting officer along with the data required in (8) above:

(i) finance data (e.g., paying office, and fund citation);
(ii) contract distribution list and addresses; and
(iii) identity of assigned contracting officer within the requiring activity;

(10) Assist the GSA contracting officer in debriefing offerors, when debriefings are requested;

(11) If required, place the delivery order(s);

(12) Accomplish any other task not included above which will further the joint contracting objective or expedite completion of the contract action at the DoD's discretion and with GSA concurrence; and

(13) Administer the contract in accordance with the terms and conditions thereof.

4-1104.2 *Timesharing and Systems Software Support Services.* GSA Form 2068 (Request for ADP Services) shall be submitted for GSA timesharing and systems software support services but need not be submitted for any contractual ADP support services, as defined in 4-1102.2.

4-1104.3 *Specifications.* Data systems specifications are the preferred method for expressing the user's requirements in solicitation documents. The data systems specifications may be augmented with equipment characteristics and elements of performance when necessary to reflect the user's needs. If data systems specifications cannot be used to describe the user's complete requirement, other types set forth below may be used. However, to minimize limitations on competition, other types of specifications or purchase descriptions shall be used in the order of precedence as listed below:

(i) equipment performance requirements;
(ii) plug-to-plug compatible purchase descriptions;

(iii) brand name or equal purchase description;

(iv) specific make and model purchase description. (This type of purchase description limits competition to the extent that its use shall be deemed a non-competitive procurement and must be justified.)

4-1104.4 *Schedule Contracts*. FSS Schedule contracts and ADTS/ADP Schedule contracts are provided by the Federal Supply Service (FSS) and the Automated Data and Telecommunications Service (ADTS), GSA, respectively.

(a) FSS/FSC Group 70 ADPE Item Schedule Contracts.

(1) A limited number of ADPE (FSC Group 70) items are available under Federal Supply Service (FSS) Schedule contracts. These items shall be contracted for in accordance with the terms and conditions of the particular contract and the applicable policies and procedures at 5-102 through 5-106. For each contract for ADPE from this source, the requirement shall be synopsized in accordance with 4-1104.6 and the contract file documented with the results of the synopsis action. If affirmative response is received (other than from FSS sources) and the FSS Schedule is used, the contract file shall be documented to include the method of acquisition; e.g., lease or purchase, with evidence that the use of the FSS Schedule is the lowest overall cost alternative, price and other factors considered. As a minimum, the other factors to be considered shall be the continued availability of spare parts and maintenance services for the ADPE items.

(2) The contract file shall also be documented with an appropriate justification for noncompetitive procurements.

(3) Use of the FSS Schedule does not waive applicable acquisition planning requirements. Necessary privacy approvals shall be obtained before acquiring ADPE from FSS Schedule contracts, when applicable.

(4) To the extent specific mandatory provisions of the pertinent FSS Schedule contract apply to the specific requirement to be ordered, the item(s) shall be contracted for in accordance with procedures applicable to the FSS Schedule contracts, notwithstanding the above.

(b) Nonmandatory ADTS/ADP Schedule Contracts. A large number of items of ADPE, software, and maintenance services are available under nonmandatory ADTS/ADP Schedule contracts, subject to the following:

(1) General. Nonmandatory ADTS/ADP Schedule contracts are not awarded on a competitive basis; therefore, competition shall be obtained unless sole source procurement is authorized. Requirements shall be synopsized in accordance with 4-1104.6; however, publication of contract award information in the Commerce Business Daily (CBD), as set forth in 1-1005, is not required when an order is placed against an ADTS/ADP Schedule contract. If ADPE, software, or maintenance services are procured under an ADP Schedule at other than lowest price available under any ADTS/ADP Schedule contract, the action shall be justified. A copy of the justification and supporting data shall be submitted to GSA if procurement was conducted under specific delegation of procurement authority. In addition, the availability of items under the ADTS/ADP Schedule contract shall not preclude or otherwise impede contracting for components, including peripheral equipment or components for augmenting an existing system from a number of different sources, if this action will be in the best interests of the Government. Suitable equipment must be considered whether or not this equipment is on an ADTS/ADP Schedule contract.

(2) Use of Nonmandatory ADTS/ADP Schedule contracts for the initial acquisition of ADPE. A delivery order may be placed against the ADTS/ADP Schedule contract under terms of the contract, *provided* that:

(i) the ordering activity has the necessary procurement authority;

(ii) the dollar value of the order does not exceed $300,000 and is within the maximum order limitation (MOL) of the applicable ADTS/ADP Schedule contract; and

(iii) the contract file is documented with the results of the synopsis action required in 4-1104.6 and evidence that use of the ADTS/ADP Schedule contract, including the method of acquisition (e.g., lease or purchase), results in the lowest overall cost to the Government, price and other factors considered. As a minimum, the other factors to be considered shall be continued availability of maintenance services and spare parts for the ADPE item.

(3) Use of Nonmandatory ADTS/ADP Schedule contracts for the continued lease or rental of an installed central processing unit (CPU). ADTS/ADP Schedule contracts may be used for the continued lease or rental of installed equipment and software except that a specific delegation of procurement authority must be obtained from GSA before issuing an order to renew the lease of a CPU when the current price to purchase under the schedule exceeds $300,000 and when available from a source other than the ADTS/ADP Schedule contract. Requirements for continued lease of an installed CPU shall be synopsized.

(4) Use of Nonmandatory ADTS/ADP Schedule contracts for the conversion from lease to purchase of installed ADPE. A specific delegation of procurement authority pursuant to 4-1103 must be obtained from GSA before issuing an order to purchase ADPE with an aggregate list purchase price of more than $300,000 when identical; i.e., specific make and model or suitable substitute equipment is available from a source other than the schedule contracts. Requirements shall be synopsized. The contract file shall be documented with an appropriate justification when ADPE item is contracted for on a noncompetitive basis.

(5) When alternate sources of supply are not expected to be available, the synopsis may be in the form of a notice to contract, without developing a solicitation package and due date. If no affirmative responses are received from potential offerors by the due date for responses to the notice, the contract file shall be so documented and no further use of the CBD is required. If affirmative responses (other than sources available under the ADTS/ADP Schedule contract) are received, and it is determined that the use of the ADTS/ADP Schedule contract is in the best interest of the Government, further synopsizing of the contract action is not required.

4-1104.5 *Requirements Contracts.* GSA makes selected ADPE and software available through requirements contracts. When ADPE and software which satisfy requirements are available from GSA requirements contracts, this source shall be the primary source of supply in accordance with the provisions of the contracts. Copies of the contracts are distributed to recipients of the ADTS/ADP Schedule for FSC Group 70, Part 1. Additional copies are available from the

General Services Administration, 8BRC, Building 41, Denver Federal Center, Denver, Colorado 80225. Some of these requirements contracts specify that GSA is responsible for the allocation of ADPE or software. In these cases, authorization shall be obtained from GSA (CDP), Washington, D. C. 20405, before placing an order. ADPE or software which is functionally similar to that on a requirements contract shall not be acquired from another source until the activity (i) documents the contract file as to why the requirements contract could not be used, and (ii) obtains a delegation of procurement authority from GSA, unless the contract falls within the exceptions noted under 4-1103.1(b).

4-1104.6 *Publicizing Contract Actions.*

(a) To ensure that appropriate competition is obtained, synopses of proposed contracts for ADPE, software, and maintenance services shall be publicized in the Commerce Business Daily (CBD) in accordance with the provisions of Section I, Part 10. Notwithstanding exception under 1-1003.1(c)(v), a requirement which may result in an order against an ADTS/ADP Schedule contract shall be synopsized when ADPE requirements referred to in 4-1104.4(b) exceed $35,000. Synopsis is not required when placing orders against ADTS/ADP Schedule contracts in any amount, for maintenance services and software. However, the existence of an ADTS/ADP Schedule contract shall not preclude or waive the requirement for maximum practicable competition in obtaining ADPE maintenance and software.

(b) The GSA centralized Bidders Mailing List (BML) for Federal Supply Classification (FSC) Group 70 shall be used for competitive ADPE and software and ADPE maintenance service procurements over $50,000. Each addressee on the BML must be informed that he must request, in writing, copies of the solicitation if he desires to compete. DoD Components shall obtain the GSA BML by a written request to the General Services Administration (8FSS), Building 41, Denver Federal Center, Denver, Colorado 80225. The request shall include the applicable class and BML code number(s), listed below:

7010-0001	ADPE Configuration
7020-0001	ADP Central Processing Unit (CPU, Computer), Analog
7021-0001	ADP Central Processing Unit (CPU, Computer), Digital
7022-0001	ADP Central Processing Unit (CPU, Computer), Hybrid
7025-0001	Memory-Magnetic Storage

7025-0002	Magnetic Tape Subsystems
7025-0003	Magnetic Disk Subsystems
7025-0004	Printers, High Speed (ADP)
7025-0005	Paper Tape Devices
7025-0007	Interactive Display
7025-0008	Interactive Graphics
7025-0009	Interactive Hard Copy
7025-0010	Other ADP Input/Output and Storage Devices
7030-0001	Operating System
7030-0002	Application Programs
7030-0003	Data Base Management Programs
7030-0004	Other Software
7035-0001	ADP Accessorial Equipment
7040-0001	Punched Card Equipment
7045-0002	ADP Support Equipment
7050-0001	ADP Components

The GSA BML may be used for subsequent contracting for items in the class and BML code, *provided* the solicitation is released to industry within 90 days following receipt of the BML in question.

(c) FPR Section 1-4.1107-3(b) shall be cited as the authority for the request. For further information concerning the above classes, DoD Components should contact General Services Administration (CDP), Washington, D. C. 20405.

(d) To contract for ADP maintenance services, agencies shall obtain the GSA maintenance BML by written request to the Office of Customer Service and Support, GSA location which serves the requesting activity. FPR 1-4.1107-3(d) shall be cited as the authority for requesting this BML.

(e) Copies of the complete solicitation shall be forwarded to all known active bidders and those who respond affirmatively as a result of paragraphs (a), (b), and (d) above.

4-1104.7 *Restrictions on the Use of Simulation in the ADPE Contracting Process*. The restrictions on the use of computer system simulation for ADPE contracting are set forth below.

(a) A simulation input definition format shall not be used as the only means of describing data processing requirements in solicitation documents. Any such format shall be accompanied by a narrative description of the ADP objectives and workload and any available application logic diagrams.

(b) Solicitations shall not be structured in such a way as to require offerors to use a specific computer system simulator in order to offer, but where offerors submit computer simulation as part of the offer, they shall be required to describe clearly the simulation used and the make and model of the computer on which the simulation was run.

(c) Offers shall not be considered to be nonresponsive or unacceptable solely on the basis of simulation results.

4-1104.8 *Software Contracts*. The contracting for computer software shall be consistent with Section IX, Parts 2, 5, and 6. In addition, contracting officers shall strive to:

(i) avoid restrictive clauses that limit the use of the software to a specific system, installation or organization;
(ii) incorporate a clause that will permit other Government agencies to obtain the software under the contract being negotiated;
(iii) obtain additional quantity discounts, should any other Government agency acquire the same software under the contract in question; and
(iv) ensure that the vendor is contractually obligated to support and maintain the software in subsequent years.

4-1104.9 *Contracting for ADP Supplies*. ADP supplies as defined in 4-1102 shall be contracted for in accordance with the following procedures.

(a) EDP tape and instrumentation tape—The provisions of 5-102 apply.

(b) Tabulating machine cards—The provisions of 5-102 apply.

(c) Marginally punched continuous forms—The provisions of 5-601 apply.

(d) Other ADP supplies—The provisions of 5-102 and 5-103 apply in the event the supplies are included in mandatory or nonmandatory Federal Supply Schedules.

4-1104.10 *Methods of Acquisition and Evaluation of ADPE*.

(a) Methods of Acquisition. The method chosen for a given ADPE acquisition shall be that which offers the greatest advantage to the Government, subject to the type of funds available and other circumstances which pertain to each situation. A lease-purchase analysis shall be made and documented to support the selected method of acquisition. Maximum use shall be made of the following four methods of acquisition.

(1) Purchase.

(2) Lease: Vendor retains title to the equipment throughout the systems life.

(3) Lease with Option to Purchase (LWOP): A method of acquisition whereby the Government leases the ADPE with options to purchase.

(4) Lease to Ownership Plan (LTOP): A method whereby title to ADPE transfers to the Government after payment of rental over a specified period in accordance with applicable funding statutes.

(b) Evaluation Factors.

(1) To enable an offeror to prepare a proposal or quotation, the solicitation shall contain all the evaluation factors that are to be considered. In addition to the mandatory requirements, desirable features shall be included where applicable. When desirable features are included in a solicitation, their value to the Government shall be expressed in dollars as an evaluation factor.

(2) Conversion rental credits (those credits proposed by a contractor for the reduction or termination of monthly lease charges for equipment already installed but which is to be replaced) applicable to installed ADPE during the period of conversion to new equipment, when parallel systems are in operation, shall not be considered as an evaluation factor in the contracting for ADPE. Conversion rental credits are not the same as, and should not be confused with, purchase option credits (those credits which accrue to the Government under contracts awarded for lease and which contain an option to purchase). The latter, when applicable, are to be considered in the evaluation.

(3) Evaluation of offers shall be based on the systems life cost and shall, among other factors, consider the following:

(i) residual value of ADPE;
(ii) present value of money (discounted for the systems life); and
(iii) maintenance cost.

The net evaluated cost resulting from the application of all factors shall be used in determining the lowest overall cost alternative.

(c) Small Purchase. When the aggregate amount of any one requirement for ADPE, software, and maintenance services does not exceed $10,000, it shall be accomplished in accordance with Section III, Part 6, except that FSC Group 70 items which are available under FSS Schedule contracts for FSC Group 70 items will be subject to this Part 11; however, existing mandatory ordering provisions representing contractual obligations of the Government will not be disturbed. In addition, monetary thresholds applicable to agency procurement authority are reflected in the ADTS/ADP Schedule contract provisions. The requirement for synopsizing prior to placing an order under a schedule contract applies to ADPE requirements which exceed $35,000.

4-1104.11 *Source Selection.* Proposal evaluation and source selection of ADPE, software, maintenance, and certain other contractual ADP support services shall be in accordance with OSD and Department procedures. A selection plan shall be prepared prior to issuance of the solicitation documents, and a copy shall be retained in the contract file.

4-1104.12 *Sole Source Contracting Documentation.* The following documents, clearly marked "sole source procurement," shall be forwarded to the General Services Administration (CDPSD), Washington, D. C. 20405, for each sole source acquisition of ADPE, if the dollar value involved is between $10,000 and $50,000:

(i) a copy of the contract; or

(ii) a copy of the purchase/delivery order issued against an ADTS/ADP Schedule contract.

4-1104.13 *Defense Contractors.*

(a) When either of the two conditions of 4-1101(c)(4) apply, then:

(1) Contracting procedures of 4-1104 through 4-1104.12 apply, as supplemented herein. (When the two conditions, referred to above, do not apply, see 3-1100 and 13-301(h).)

(2) Defense contractors shall submit requests for all methods of acquisition for ADPE software, maintenance services, and supplies to the Administrative Contracting Officer for processing and approval in accordance with OSD and Department procedures.

(b) The following procedures are applicable when leased ADPE is used on Government contract work and the total cost of leased ADPE is absorbed by the Government under a cost-reimbursement type contract.

(1) The contracting officer shall require the contractor to include a provision in the rental contract stating that the Government will have the initial option to utilize any purchase credits or other benefits earned through rental payments.

(2) When leased ADPE is used on Government contract work under a cost-reimbursement type contract and less than 100 percent of the cost of the equipment is absorbed by the Government, the contracting officer should obtain for the Government, when possible, the right to accrued purchase credits, if the contractor elects not to exercise his purchase option. Accordingly, negotiation objectives for cost-reimbursement type contracts shall include the following when less than 100 percent of the cost of the equipment is absorbed by the Government.

(i) the contractor should be encouraged to incorporate in his ADP equipment lease the right to assign accrued purchase credits to the Government;

(ii) the contracting officer should obtain for the Government, if possible, the right of first refusal on accrued purchase credits if the contractor elects not to exercise his purchase option; and

(iii) a 60-day advance notice should be provided to the Government when the contractor intends to terminate his ADP equipment lease if the Government has been granted rights to accrued purchase credits.

(3) If the Government has been granted rights to purchase credits in accordance with (b) above and the contractor elects not to exercise his purchase option, the ADPE shall be reported through DoD reutilization channels as provided in paragraph (c) below.

(4) If the Government elects to exercise the option to purchase ADPE leased by the contractor, the applicable provisions in this Part 11 relating to the acquisition of ADPE shall apply to the exercise of the option as if the Government was the initial lessee.

(c) Excess ADPE, software, and associated spare parts in the possession of contractors, whether leased or Government-owned, will be reported regardless of the procurement authority under which they were acquired. Accordingly, ADPE, software, and associated spare parts acquired under any of the authorities set forth in 4-1101 are subject to the reporting requirements of DAR Section XXIV and Defense ADPE Reutilization

Manual DOD 4160.19M. ADPE, software, and associated spare parts with an initial acquisition cost below $1,500 are subject to special excess screening procedures in DOD Manual 4160.19M.

4-1104.14 *ADP Fund.*

(a) The GSA ADP Fund is a revolving fund available for financing the purchase and, under certain circumstances, lease of ADP equipment and/or software. When approved by GSA, the ADP fund may be used to obtain maintenance services for ADPE leased from GSA through the ADP fund.

(b) When evaluation of offers indicates purchase as the lowest overall cost alternative, but the funds committed to the purchase are inadequate or are not of the proper type, the contracting officer shall notify the requiring or other Department-designated activity of the savings to be realized if items are purchased rather than leased. This activity, upon insuring that funds are not available, shall make an inquiry to GSA for the use of the ADP fund. If the ADP fund is not available, this activity shall notify the contracting officer that the ADP fund is not available and that the next lowest overall cost alternative should be selected.

(c) If the GSA ADP Fund is used, the activity shall negotiate and execute a payback arrangement with the GSA.

4-1104.15 *Contract Clauses.* In addition to the other clauses required by DAR, the clauses in 7-2302 shall be used in all solicitations and contracts for ADP equipment, software, maintenance services, supplies, and certain other contractual ADP support services when GSA has delegated procurement authority either by DPA or by regulation.

4-1105 Conflicts Between DAR and DPA. When contracting for ADPE, software, maintenance services, supplies, and certain other contractual ADP support services under a DPA from the GSA, the provisions of the delegation shall take precedence over any conflicting provisions of the DAR and shall not be processed as a deviation from DAR.

4-1106 Acquisition Assistance. Assistance in any phase of the contracting process covered by this Part may be obtained by contacting:

ARMY:

U.S. Army Computer Systems Selections
and Acquisition Agency
Alexandria, VA 22331

HQ DA DAAC-ZK
The Pentagon
Washington, DC 20310

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NAVY:

ADP Selection Office
Washington, DC 20376

Naval Data Automation Command
Washington Navy Yard
Washington, DC 20374

AIR FORCE:

Air Force Computer Acquisition Center
Hanscom AFB, MA 01731

HQ USAF (AF/RDC)
Washington, DC 20330

DEFENSE LOGISTICS AGENCY:

DLA-PP
Cameron Station
Alexandria, VA 22314

Part 12 – Commercial or Industrial-Type Activities

4-1200 Scope of Part. This Part implements DoD contracting policy regarding Commercial or Industrial-Type Activities (CITA) and applies to those requirements identified for cost comparison.

4-1201 Policy. It is the general policy of the Government to rely on private commercial sources to supply the products and services it needs when it is more economical to do so, consistent with National Defense requirements and the availability of satisfactory commercial sources. Implementation of this policy employs the conventional contract process with the following added features: (i) the Government prepares an in-house cost estimate based on the same statement of work and same level of performance as offerors; (ii) a cost comparison is made between the potentially successful offeror and the Government; and (iii) depending on the results of the cost comparison, a contract is awarded or the solicitation is cancelled.

4-1202 Contract Clauses. The following clauses shall be included as appropriate in all solicitations and resultant contracts subject to this Part:

(i) Notice of Cost Comparison (Advertised), 7-2003.89(a);
(ii) Notice of Cost Comparison (Negotiated), 7-2003.89(b); and
(iii) Right of First Refusal for Employment Openings, 7-104.104.

4-1203 Procedures.

4-1203.1 *Planning*. DoD commercial or industrial-type activities are inventoried and reviewed periodically by management to determine if the activity is subject to a cost comparison. During such reviews, contracting officers shall assist management officials in identifying private commercial sources. If it appears no private commercial source is available, management officials with the assistance of the contracting officer shall seek to identify sources through--

(i) synopsis of the requirement in the *Commerce Business Daily* at least three times in a 90-day period with a minimum interval of 30 days between each synopsis or, for urgent requirements, at least two times in a 30-day period with a minimum interval of 15 days between each synopsis; and
(ii) seeking assistance from the General Services Administration, Small Business Administration, and the Domestic and International Business Administration in the Department of Commerce.

When commercial sources are available, an acquisition package, to include a clear and concise performance-oriented statement of work, will be prepared by the requiring activity personnel in conjunction with the contracting officer.

4-1203.2 *In-House Cost Estimate.*

(a) An in-house cost estimate is prepared based on the same statement of work that is in the solicitation. The in-house cost estimate and other cost elements required to accomplish a cost comparison are entered on a cost comparison form, audited, sealed, dated and submitted to the contracting officer not later than the time established for receipt of initial offers or bid opening. All necessary detailed supporting data will be included in the sealed envelope when it is submitted to the contracting officer.

(b) The confidentiality of both the in-house cost estimate and the bids in formally advertised cost comparison studies shall be maintained until the time of public disclosure to ensure they are completely independent. For cost comparison studies conducted using negotiation procedures, confidentiality and independence shall be maintained until after completion of negotiations and selection of the most advantageous offer. Personnel who have knowledge of the cost figures set forth in the government in-house cost estimate shall not participate in the offer evaluation process.

4-1203.3 *Solicitation.* Solicitations shall be prepared in accordance with 4-1202 and 2-201 or 3-501. For purposes of the cost comparison, solicitations shall provide for a base contract period and any necessary priced options to total the amount of time represented by the in-house cost estimate. Evaluation of options for selection between competing offers shall be in accordance with 1-1500.

4-1203.4 *Evaluation.* After receipt of the sealed and dated in-house cost estimate and the offers, the procedures for CITA contracting differ as follows from conventional contracting procedures.

(a) Formal Advertising.

(1) At the time of public bid opening, after recording of bids, the sealed envelope containing the cost comparison form and the in-house cost estimate shall be opened and the price of the apparent low bidder shall be entered on the cost comparison form. The contracting officer shall announce the results, based upon the completed cost comparison form, subject

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to evaluation of bids for responsiveness and responsibility, and resolution of requests for review. The abstract of bids, the completed cost comparison form and detailed supporting data relative to the in-house cost estimate shall be made available to interested parties for review. Interested parties shall be advised that no final decision will be made for at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex) during this public review period. Review procedures are at (c) below.

(2) After the evaluation of bids and determinations of responsibility, the price of the low, responsive, responsible bidder shall be provided to the preparer of the in-house cost estimate for final review of the cost comparison form and origination of the Decision Summary Form.

(3) The final decision for performance in-house or by contract shall be reported through appropriate channels as required by departmental procedures. This final decision shall be communicated to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(4) The completed cost comparison analysis shall be made available to interested parties upon request.

(b) Negotiation.

(1) The contracting officer shall receive proposals, evaluate, negotiate and select the most advantageous proposal in accordance with Section III. The contracting officer, together with the preparer of the in-house cost estimate then open the Government in-house cost estimate, complete the cost comparison form and make a cost comparison. This cost comparison is made prior to public announcement.

(2) If the result of the cost comparison is in favor of contracting out, the decision to award a contract shall be reported through appropriate channels as required by departmental procedures. Upon receiving clearance from appropriate channels, the contracting officer shall then award a contract. In addition, the contractor shall be put on notice (i) that such award is conditioned upon its offer still being more economical than in-house performance after completion of the public review period plus such additional time as may be required pursuant to the review procedures set forth in (c) below, and (ii) that preparation for commencement of performance shall not begin until notification to commence is received from the contracting officer. Concurrent with the award, the contracting officer shall publicly announce the

results of the cost comparison to all interested parties. This public announcement shall include revealing and making available for public review the in-house cost estimate with detailed supporting data, the completed cost comparison form and the name of the contractor. Interested parties shall also be advised that contractor preparations for performance are conditioned upon completion of a public review period plus such additional time as may be required pursuant to the review procedures set forth in (c) below. The period for public review shall commence with the announcement of the results of the cost comparison by the contracting officer and shall run for a period of at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex). Upon completion of the public review period and resolution of questions raised, if any, the Decision Summary Form shall be completed and approved. After receiving clearance from appropriate channels, the contracting officer shall issue an authorization to commence to the contractor, or cancel the contract, as appropriate.

(3) If the result of the cost comparison is in favor of in-house performance, the contracting officer shall announce the results of the cost comparison and make available for public review the in-house cost estimate, the detailed supporting data relative to the in-house cost estimate, the completed cost comparison form, and the price of the offeror whose offer was the most advantageous to the Government. The period for public review shall commence with the announcement by the contracting officer of the results of the cost comparison and shall run for a period of at least 5 working days (a maximum of 15 working days if the action is deemed by the contracting officer to be complex). Upon completion of the public review period and resolution of questions raised, if any, the Decision Summary Form shall be completed and approved. After receiving clearance from appropriate channels, the contracting officer shall cancel the solicitation or award the contract, as appropriate.

(c) Review Procedures. These procedures shall only be used to resolve questions concerning the calculation of the cost comparison and shall not apply to questions concerning potential award to one firm in preference to another. Requests for review of any discrepancy in the cost comparison shall be filed with the contracting officer, in writing, by directly affected parties. Such requests shall be considered only if based on specific objections and filed within the public review period. The contracting officer shall forward such requests for review to the preparer of the in-house cost estimate for consideration in accordance with departmental procedures. Decisions with regard to such requests for review are final and shall be communicated to the requesting party within 30 days of receipt.

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SECTION V

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5-000 Scope of Section. This section deals with the procurement of supplies and services by the Departments from or through any other Government department or agency.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 1—Procurement Under General Supply Schedule Contracts

5-100 Applicability. This part applies to procurement of supplies to be delivered or services to be performed in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This part may be applied optionally in Alaska and Hawaii. It does not apply in any event to items under the cognizance of the Defense Personnel Support Center or to items which are being purchased for resale.

5-101 Federal Supply Schedule Contracts. The Federal Supply Service, General Services Administration, establishes contracts for common use classes of supplies and services. These contracts are summarized in Federal Supply Schedules which list the contractors and the supplies or services that may be purchased from them. Purchasing offices shall order their requirements for supplies or services covered by these contracts as set forth in 5-102 and 5-103. Copies of the Federal Supply Schedules and the Federal Supply Schedule Check List (a quarterly publication indicating the status of all Federal Supply Schedules) are distributed by the General Services Administration to all purchasing activities. Copies of the Schedules and the Check List and the General Provisions of the Federal Supply Schedule contracts are available from the General Services Administration regional offices listed in 5-203. Requests for them should be submitted on GSA Form 457A, which is also available from the regional offices.

5-102 Mandatory Federal Supply Schedules.

5-102.1 *General.* Federal Supply Schedules under which procurement is mandatory on the Department of Defense are listed in 5-102.3. The pertinent contracts provide that for a definite period the contractor is obligated to deliver all supplies or services that may be ordered thereunder by Government agencies, subject to the stated minimum and maximum order limitations.

5-102.2 *Exceptions to Mandatory Use.*

(a) *Delivery Requirements.* When the delivery period stated in a Federal Supply Schedule does not meet the delivery requirement of the purchasing office, use of the Federal Supply Schedule is not mandatory. However, delivery dates shown in Federal Supply Schedules are based upon the average capability of the contractor and are usually conservative. In most instances, contractors are able to make delivery within a shorter period of time. Therefore, when delivery is required in a shorter time than the maximum shown in the Schedule, the contractor should be asked if the shorter delivery requirements can be met. If the contractor offers to meet the earlier delivery requirements, they should be specified in the order with a reference to such offer. If delivery is offered in a shorter time than the maximum stated in the Schedule, but later than that required by the purchase request, the contracting officer shall ascertain from the activity initiating the purchase request whether the offered delivery is acceptable. This procedure need not be followed when transportation time from the contractor's shipping point or time required for inquiry and reply make conformance impracticable. When multiple award schedules are involved, the purchasing office need query only one contractor after considering the requirements of 5-106.

(b) *Similar Items*. When specific supplies or services having the same general characteristics and intended use as those listed in a Federal Supply Schedule are needed for a special requirement, the following procedures shall apply.

(1) *Non-emergency Requirements*. When supplies or services are to be procured from other sources to satisfy a nonurgent requirement, the head of the office initiating the purchase request or his designated representative shall furnish to the purchasing office a signed statement identifying the supplies or services to be purchased. This statement shall include:

- (i) complete description of the item requested (descriptive literature such as cuts, illustrations, drawings and brochures which show the characteristics or construction of the item or explain its operation, should be furnished whenever possible in satisfaction of this requirement);
- (ii) comparison of price and pertinent technical differences between the item requested and the FSS item:
  - (A) inadequacies of the FSS item in performing required functions;
  - (B) advantages of the item requested, such as technical, economic, or other;
- (iii) quantity required;
- (iv) other pertinent data when applicable.

The purchasing office, prior to initiating purchase action, shall furnish such statement to the Commissioner, Federal Supply Service, General Services Administration, with a request that the requirement for using the Federal Supply Schedule item be waived. If such waiver is not granted, the case shall be referred to the Head of the Procuring Activity or his Deputy or to such higher authority as may be required by the Departments, and in the case of the Air Force, Commanders of AFLC Air Logistics Centers who shall make the final decision as to whether the nonschedule item will be purchased and shall promptly notify the Commissioner, Federal Supply Service, and the Purchasing Office, of the decision reached.

(2) *Emergency Requirements*. When supplies or services are to be procured from other sources and the situation will not permit the delay incident to following the normal channels of obtaining a waiver from the General Services Administration prior to purchase, such waiver shall not be requested. In emergency situations, the head of the office initiating the purchase request, or his designated representative, shall furnish to the purchasing office a signed statement identifying the supplies or services to be purchased, and explaining why similar items listed in the applicable Federal Supply Schedule will not meet the specific requirements. The purchasing office shall within 15 days of the date of purchase, furnish such statement to the Commissioner, Federal Supply Service, General Services Administration.

(c) *Abnormal Requirements*. When the requirements of the purchasing activity are (i) less than the minimum order limitation or (ii) in excess of the maximum order limitation provided in the applicable Federal Supply Schedule, use of the Schedule is not mandatory. However, where requirements for supplies or services exceed the maximum limitations of the applicable Schedule, but are within the DoD-GSA Interagency Purchase Assignments, those items will be procured through the General Services Administration. (See 5-1201.8.)

(d) *Authorization to Purchase Identical Item(s) When Available at Lower Price(s).* "Escape" provisions appear in certain Federal Supply Schedule contracts similar to the following:

> "AUTHORIZATION TO PURCHASE IDENTICAL ITEM(S) WHEN AVAILABLE AT LOWER PRICE(S). When an ordering agency finds that an identical product (make and model number) or service is available from another source at a delivered price lower than the contract price, such agency is free to purchase such item at such lower price without violating the contract requirements. Those agencies that purchase items at lower prices are required to furnish a copy of the ordering document to: General Services Administration, Federal Supply Service, Code FCC, Washington, D.C. 20406."

When it is known that the conditions of such a provision can be met, the guidance of 5-103, pertaining to Federal Supply Schedules not mandatory upon DoD, shall be followed. GSA shall be informed of any non-schedule purchase as required by such "escape" provision. Contracting officers shall not solicit bids, or otherwise test the market solely for the purpose of seeking alternative sources to mandatory Federal Supply Schedules.

5-102.3 *Applicability of Listed Federal Supply Schedules.* Supplies and service covered by the Federal Supply Schedules listed herein are mandatory in whole or in part upon some element of the Department of Defense. Some of the Federal Supply Schedules listed include classes unrelated to the Federal Supply Group which identifies the Schedule. To aid in locating an item in the mandatory Schedules, the classes included in each Schedule have been listed. The Remarks column states exceptions to the mandatory provisions of the Schedule when applicable. (But see Part 2 of this section for mandatory use of GSA Term Contracts for maintenance, repair, rehabilitation and reclamation of personal property.) The Schedules should be checked for complete details concerning the exceptions.

(a) *Mandatory Nationally.*

FSC Group	FSC Class	Title of Schedule	Remarks
25		VEHICULAR EQUIPMENT COMPONENTS, Part I.	No Exceptions.
	2520	Clutch Facings (Metallic).	
	2530	Brake Linings (Metallic).	
	2540	Tire Chains.	

FSC Group	FSC Class	Title of Schedule	Remarks
26		PNEUMATIC TIRES AND INNER TUBES, Part II.	No Exceptions.
	2610	Highway,Off-Highway and Industrial.	
26		PNEUMATIC TIRES, Part V.	No Exceptions.
	2610	Motorcycle, Emergency/Pursuit and Agricultural.	
35		SERVICE AND TRADE EQUIPMENT, Part I.	No Exceptions.
	3540	Sealing and Packaging Machinery.	
	3590	Heat and Cold Process and Laminating Presses.	
35		SERVICE AND TRADE EQUIPMENT, Part III.	No Exceptions.
	3550	Vending Machines.	
36		SPECIAL INDUSTRY MACHINERY, Part II.	Not Mandatory on DoD for the following items: 51-1, 51-1-1, 51-1-2, 51-1-3, 51-2, 51-3, 51-60, 51-61, 51-62, 51-104, 51-105, 51-106, 51-110, 51-110-1, 51-111, 51-112, 51-113, 51-114, 51-115, 51-125, 51-125-1, 51-126, 51-127, 51-146, 51-165, 51-166, 51-167 and 51-2017.
	3610	Lithographic Printing Plates and Solutions; Masters, Spirit Duplication, Thermal Process; Printing Duplicating and Book Binding Equipment.	
	3615	Pulverizing, Pulping and Shredding Machines.	
36		SPECIAL INDUSTRY MACHINERY, Part IV.	Not Mandatory on DoD for the following items: 51-4, 51-5, 51-6, 51-10, 51-11, 51-12, 51-28, 51-29, 51-30, 51-32, 51-43, 51-44, 51-45, 51-46, 51-47, 51-48, 51-52, 51-53, 51-54, 51-55, 51-55-1, 51-56 and 51-57.
	3610	Copying Equipment, Supplies and Services.	

FSC			
Group	*Class*	*Title of Schedule*	*Remarks*
41		AIR CONDITIONING EQUIPMENT, Part I.	No Exceptions.
	4120	Window Types and Remote Air-Cooled Condenser Units.	
45		SANITATION EQUIPMENT, Part II.	No Exceptions.
	4540	Security Incinerators and Accessories.	
	6685	Replacement Pyrometer.	
51		TOOLS.	Mandatory on DoD only for items in FSCs 5120 and 5130.
	5120	Hand Tools, Nonpowered.	
	5130	Hand Tools, Powered. Note: This Schedule also includes certain items in FSCs 3220, 3405, 3413, 3415, 3416, 3417 and 3439.	
52		MEASURING TOOLS.	No Exceptions.
	5210	Measuring Tapes.	
53		ABRASIVES.	No Exceptions.
	5345	Belts, Disks and Stones.	
	5350	Cloth, Grain and Paper.	
58		COMMUNICATION EQUIPMENT, Part III, Section A.	Mandatory on DoD, except FSC 5830.
	5830	Electronic Megaphones.	
	5835	Semi-Professional Audio Recording Equipment.	
58		COMMUNICATION EQUIPMENT, Part III, Section B.	Mandatory on DoD, except FSC 5820.
	5820	Professional Video Recording Equipment.	
	5835	Professional Audio Recording Equipment.	
58		COMMUNICATION SUPPLIES, Part V.	No Exceptions.
	5820	Tape, Video.	
	5835	Sound Recording Tape, Magnetic Tape Cartridges.	
	7430	Magnetic Cards.	
	7045	Electronic Data Processing Tape (widths other than ½")	
58		COMMUNICATION SUPPLIES, Part V, Section C.	No Exceptions.
	5835	Instrumentation Recording Tape, Standard and High Resolution.	
58		COMMUNICATION SUPPLIES, Part V, Section D.	No Exceptions.
	5835	¼" Audio Recording Tape and reel and hubs.	

FSC			
Group	Class	Title of Schedule	Remarks
58		COMMUNICATION EQUIPMENT, Part VII.	Not Mandatory on DoD for Rental, Repair and Maintenance of Government owned Equipment.
	5820 5985	Radio Transmitting/Receiving equipment, tone/voice paging systems, and antennas.	
61		BATTERIES, Part III.	Mandatory on DoD, except Index Numbers 14 through 22.
	6135	Batteries and Dry Cells for: Alarm Systems, Emergency Lighting, Flashlights and Lanterns, Telephone Circuits, Tube Radios, Walkie Talkie and Paging Systems.	
	6140	Nickel Cadmium Batteries.	
62		LIGHTING FIXTURES AND LAMPS, Part I.	Not Mandatory on the Dept. of Army, Air Force for any item covered by Army/Military Specification.
	6230	Household and Quarters Lamps.	
62		LIGHTING FIXTURES AND LAMPS, Part II.	No Exceptions.
	6230	Light Sets, Emergency and Auxiliary.	
62		LIGHTING FIXTURES AND LAMPS, Part III.	No Exceptions.
	6240	Fluorescent and Incandescent.	
62&67		LIGHTING FIXTURES AND LAMPS.	No Exceptions.
	6240	Electric Lamps.	
	6750	Photographic Lamps.	
66		INSTRUMENTS AND LABORATORY EQUIPMENT, Part III.	No Exceptions.
	6645	Time Recorders, Date and Time Stamps, Card Racks.	
67		MICROPHOTOGRAPHIC EQUIPMENT AND SUPPLIES, Part IV, Section B.	Mandatory on DoD, except for items: 21-4(a), 21-4 (b), 21-4(c), 21-6, 21-7, 21-12-1, 21-12-2, 21-12-3, 21-21, 21-21(a), 21-22, 21-22(a), 21-40, 21-41 and NSN 6750-00-608-1092.
	6720	Microfilm Cameras.	
	6730	Microfilm Projectors and Readers.	
	6740	Microphotographic Equipment.	
	6750	Microphotographic Supplies.	
	6760	Microfilm Cartridges and Magazines.	
	7530	Microfilm Print Paper.	
	7670	Microfilmed Library Systems.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Sections E and F.	No Exceptions.
	6830	Compressed and Liquefied Gases. Section E—Refrigerant Gases. Section F—Sulfur and Hexafluoride.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section G.	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Helium.	

BEST DOCUMENT AVAILABLE

FSC			
Group	*Class*	*Title of Schedule*	*Remarks*
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section H.	No Exceptions.
	6830	Fire Extinguishing Fluorocarbons.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section J.	No Exceptions.
	6830	Argon, Missile Checkout, NSN 6830-00-882-1793.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section K.	Mandatory on DoD for Destinations listed in the Schedule.
	6830	Oxygen: Aviator's Breathing.	
70		DATA PROCESSING STORAGE AND RELATED EQUIPMENT, Part X.	No Exceptions.
	5820	Video Tape Storage, Handling and Transportation Equipment.	
	5835	Audio, Instrumentation, and other Tape Storage, Handling, and Transportation Equipment.	
	7045	ADP Storage and Handling Equipment.	
	7110	Cabinets and Desks, Card Punch and Programmers.	
	7430	MTST Magnetic Tape Cartridge Storage.	
70		DATA PROCESSING SUPPLIES, Part XI. Edp ½" wide, 800, 1600 and 6250 bpi.	No Exceptions.
71		HOUSEHOLD FURNITURE, Part I, Section A.	No Exceptions.
	7105	Ranch Style: Note: This Schedule also includes FSCs 7195 and 7520.	
71		HOUSEHOLD FURNITURE, Part I, Section B.	No Exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Early American and Eighteenth Century English and American Reproductions.	
71		HOUSEHOLD FURNITURE, Part II, Section A.	Not Mandatory on DoD for Index items 331 through 438.
	7105	Upholstered Living Room.	
71		HOUSEHOLD FURNITURE, Part II, Section B.	No exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Modular Multiple Seating Units, Wood and Metal.	
71		HOUSEHOLD FURNITURE, Part III.	No Exceptions.
	7105	Danish, Traditional and Modern Styles.	

FSC Group	FSC Class	Title of Schedule	Remarks
71		HOUSEHOLD FURNITURE, Part IV.	No Exceptions.
	7105	Rattan Style.	
71		OFFICE FURNITURE, Part V, Section C.	No Exceptions.
	7110	Steel Vertical blueprint Filing Cabinets, Roll Drawing Files, High Density and movable shelf Filing Systems.	
71		HOUSEHOLD FURNITURE, Part VII, Section A.	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal, Indoor-Outdoor, Hospital and Quarters and Recreation Room.	
	7110	Lobby Use and Reception Room.	
71		HOUSEHOLD FURNITURE, Part VII, Section B.	Not Mandatory on DoD for items covered by Military Specifications or items obtainable from FPI Schedule of Products.
	7105	Metal Frame Dormitory Furniture for Quarters Use.	
71		FURNITURE, Part X, Sections A and B.	Not Mandatory on DoD for Self-Edged Tables or items obtainable from FPI Schedule of Products.
	7105 7195	Section A—Classroom Furniture, Student Chairs, Desks and Tables; Teachers Chairs and Desks.	
	7105 7110 7125	Section B—Special Purpose Furniture, Cafeteria Tables and Chairs, Lockers, Training and Conference Tables & Chairs.	
71		OFFICE FURNITURE, Part XI, Section B.	No Exceptions.
	7110	Security Filing Cabinets, Safes, Vaultdoors, and Map and Plan Files.	
71		OFFICE FURNITURE, METAL AND WOOD, Part XII.	No Exceptions.
	7110	Executive Modern, Wood and Metal.	
71		LIBRARY FURNITURE, Part XIII, Section A.	No Exceptions.
	7195	Wood Shelving and Wood & Metal Case goods.	
71		LIBRARY FURNITURE, Part XIII, Section B.	No Exceptions.
	7195	Metal Shelving.	
71		HOUSEHOLD FURNITURE, Part XV.	No Exceptions other than those items obtainable from FPI Schedule of Products.
	7105	Traditional Wood, and Composite metal and Wood.	
71		HOUSEHOLD FURNITURE, Part XVI, Section A.	No Exceptions.
	7105	Sofa Beds.	

FSC Group	FSC Class	Title of Schedule	Remarks
71		HOUSEHOLD FURNITURE, Part XVI, Section B.	No Exceptions.
	7105	Motel Type.	
71		FURNITURE, Part XXII.	No Exceptions.
	7105	Lounge and Reception Room.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section A.	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Carpets, Rugs, Carpet Tile and Carpet Cushions.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section B.	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Floor Coverings, Tile Linoleum and Vinyl Sheet.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part I, Section C.	Not Mandatory on DoD for Deck Covering and other items required for use aboard Vessels.
	7220	Entranceway Carpet Mats and Mattings.	
72		HOUSEHOLD AND COMMERCIAL FURNISHINGS, Part II.	Mandatory on DoD for Window Shades only, FSC 7230.
	7230 8305	Window Shades, Cloth and Vinyl.	
74		OFFICE MACHINES, Part I.	Not Mandatory on DoD for Repair Parts. Rental, Repair, Maintenance and Exchange Allowances.
	7430	Electric Typewriters, Composing, Photocomposing and Word Processing Machines. (See FSC Group 74, Part V for Manual Typewriters).	
74		OFFICE MACHINES, Parts II and III.	Not Mandatory on DoD for Repair Parts, Rental, Repair and Maintenance.
	7420	Accounting and Calculating Machines.	
	7450	Office Type Dictating and Transcribing Machines.	
	7490	Miscellaneous Office Machines.	
74		VISIBLE RECORD EQUIPMENT, Part IV.	Not Mandatory on DoD for Rental, Repair and Maintenance.
	7460	Control Boards, Files and Frames.	
74		OFFICE MACHINES, Part V.	No Exceptions.
	7430	Manual Typewriters and Repair Parts. (See FSC Group 74, Part I for Electric Typewriters).	
75		OFFICE SUPPLIES, Part I, Section A. (Supplements 1 and 2)	No Exceptions.
	7510	Office Supplies (includes certain items of Art and Drafting supplies), and Label Tape, Pressure Sensitive Adhesive.	
	7690	Label Marking Tape.	
75		OFFICE SUPPLIES AND DEVICES, Part I, Section B. (Supplements 1, 2 and 3.)	No Exceptions.

FSC			
Group	*Class*	*Title of Schedule*	*Remarks*
	7520	Office Devices and Accessories.	
	7510	Tape, Pressure Sensitive.	
	8135	Tape, Pressure Sensitive, Packaging and Packing.	
	9310	Cardboard Bristol.	
75		OFFICE SUPPLIES, Part I, Section C.	No Exceptions.
	7530	Special Use Paper; Drawings and Tracing; Graph; Paperboard; Index Sheet Set and Plastic Sheets.	
75		OFFICE SUPPLIES, Part IV.	No Exceptions.
	7520	Rubber Stamps.	
75		OFFICE SUPPLIES, Part V.	No Exceptions; however plain envelopes for use in the District of Columbia shall be procured from GPO in accordance with Title 44 USC, Section 225.
	7530	Envelopes: Mailing, Printed and Plain.	
75		TABULATING CARDS, Part VIII.	No Exceptions.
	7530	Tabulating Cards, Aperture Cards and Copy Cards.	
76		PUBLICATIONS, Part I.	No Exceptions.
	7610	Books, Pamphlets, Dictionaries, Maps, Atlases, Charts and Globes.	
76		LAW BOOKS AND TAX AND OTHER REGULATORY REPORTING PERIODICALS, Part II.	No Exceptions.
	7610	Law Books.	
	7630	Tax and Other Regulatory Reporting Periodicals.	
77		HOME ENTERTAINMENT EQUIPMENT, Part I.	No Exceptions.
	7740	Phonograph Records; Tapes; (8) Track Cartridge and Cassettes.	
77		HOME ENTERTAINMENT EQUIPMENT, Part III.	No Exceptions.
	7730	TVs, Radios, Phonos, Combination Sets and Related Accessories.	
78		RECREATIONAL AND ATHLETIC EQUIPMENT, Part I, Section A.	No Exceptions.
	7810	Athletic and Sporting Equipment.	
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section B.	No Exceptions.
	7820	Games and Toys.	
	7830	Recreational and Gymnasium Equipment.	
78		ATHLETIC AND RECREATIONAL EQUIPMENT, Part I, Section C.	No Exceptions.
	7820 7830	Outdoor Recreational Equipment.	

FSC Group	FSC Class	Title of Schedule	Remarks
79		CLEANING EQUIPMENT AND SUPPLIES.	No Exceptions.
	7910	Vacuum Cleaners, Carpet Shampooers, Floor Polishing and Scrubbing Machines.	
80		PAINT, Part I, Section A.	No Exceptions.
	8010	Tree Marking.	

(b) *Mandatory within the specified GSA Geographical Areas.*

FSC Group	FSC Class	Title of Schedule	Remarks
42		FIREFIGHTING EQUIPMENT AND SUPPLIES, Part I.	Not Mandatory on DoD for Fire Hose or NSNs 4210-00-251-7904 and 4210-00-720-1815.
	4210 4720	Fire Extinguishers, Accessories and Fire Hose.	
67		PHOTOGRAPHIC SUPPLIES, Part II, Section B.	Mandatory on DoD for items 19-1, 19-2 and 19-6 only.
	6750	Sensitized and Chemical Supplies.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section A.	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6505	Medical Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section B.	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Industrial Gases.	
68		CHEMICALS AND CHEMICAL PRODUCTS, Part III, Section C.	Mandatory on DoD activities located within the specified GSA Geographical Areas other than Region 3, except for items procured through DPSC.
	6830	Dry Ice.	
87		AGRICULTURAL SUPPLIES, Part I.	No Exceptions.
	8710	Forage and Feed.	
87		AGRICULTURAL SUPPLIES, Part IV.	No Exceptions.
	8730	Seed.	
89		SUBSISTENCE, Part III.	No Exceptions.
	8960	Ice.	
IG 721		SERVICES	Mandatory on DoD activities located within the specified GSA Geographical Areas, except for Custodial Contracts.
	7213	Wiping Cloth Service.	

(The next page is: 5:14)

(c) *Mandatory in GSA Areas Other Than Region 3.*

68		CHEMICALS AND CHEMICAL PRODUCTS, PART III, SECTIONS A, B, C, AND D.	Mandatory on DOD Activities located within the specified GSA Geographical Area other than Region 3 except for Items procured through the Defense Personnel Support Center.
	6505	Medical Gases.	
	6830	Industrial Gases; Compressed and Liquefied.	

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

5-102.4 *Establishment or Revision of Federal Supply Schedules Mandatory Upon DoD.*

(a) *Policy*. The Administrator of General Services Administration has agreed that the concurrence of the Office of the Secretary of Defense will be obtained prior to establishing a Federal Supply Schedule which is mandatory upon the Department of Defense or prior to adding or removing any items from Federal Supply Schedules which are mandatory upon the Department of Defense or making any other changes in such Schedules affecting their use by Department of Defense in meeting its supply requirements. However, deletion of an item from a Federal Supply Schedule will not require Office of the Secretary of Defense concurrence when the reports of sales for that item amount to less than $1,000 per year except where—

(i) the item is a part or accessory incidental to a basic item;
(ii) the item is a component of a unit assembly;
(iii) the item has a demonstrated need to fill out a range of colors, sizes or other characteristic; or
(iv) the item involves a contract for services.

(b) *Procedures*. Requests for the establishment of or a change in a Federal Supply Schedule mandatory on elements of the Department of Defense shall be forwarded to the Executive Director, Procurement and Production, Defense Supply Agency, for coordination with the Departments. Such proposals normally shall be forwarded in sufficient time to provide three months for consideration by all interested elements of the Department of Defense and General Services Administration prior to the desired effective date. In the event action on such proposals is desired in a shorter period of time, a minimum of thirty-five days for consideration should be anticipated. These proposals will be distributed to the representatives of the Departments and General Services Administration engaged in the Federal Supply Schedule review program, as appropriate, for comment or concurrence. Any questions will be jointly considered before final action is taken. If the Departments and General Services Administration representatives cannot reach agreement on a question raised, the question will be forwarded to the Assistant Secretary of Defense (Installations and Logistics) for resolution.

5-103 Federal Supply Schedules Not Mandatory Upon DoD. In addition to the Federal Supply Schedules listed in 5-102, there are other Schedules mandatory for use by one or more civilian agencies of the Government but not mandatory on the Department of Defense. DoD activities shall consider the nonmandatory schedules as another source of supply to assure that purchases of supplies and services of the type contained in such schedules are made to the best advantage of the Government, price, delivery and other factors considered.

5-104 Other Federal Supply Schedules.

5-104.1 *Completely Optional Federal Supply Schedules.* In addition to the Federal Supply Schedule contracts described in 5-102 and 5-103, there are Federal Supply Schedules which are completely optional for use by any Government purchasing activity and on which vendors are not required to accept orders. Such Schedules currently exist in the following areas:

FSC Group	*Title*
25—28—29—38	Motor-Vehicle Parts and Accessories, Gasoline and Diesel Engine and Generator Parts, and Road Building Machinery Parts.
74	Office Machines (other than typewriters), Rental, Repair and Maintenance.

Except where precluded by administrative expense or urgency considerations, optional Federal Supply Schedules shall be considered equally with other sources by the contracting officer in assuring that purchases of items of the type contained in such schedules are made to the best advantage of the Government, price, delivery, service and other factors considered. This paragraph shall in no way minimize the requirements for using formal advertising when the situation warrants. Where purchases are less than $500, the procedure in 3-604.1 will apply.

5-104.2 *Regional Federal Supply Schedules.* There are certain Federal Supply Schedules issued by the GSA that are for use in a specific geographical region. These Schedules apply to activities within the specified region to the extent prescribed therein.

5-105 Order for Supplies or Services. DD Form 1155 should be used as a delivery order in purchasing supplies or services from Federal Supply Schedule contractors.

5-106 Federal Supply Schedules with Multiple Source Provisions.

(a) *General.* Certain of the Federal Supply Schedules, listed in 5-102.3, provide several sources for certain requirements. Additionally, some such Schedules indicate that multiple sources are provided to make available a selection of supplies or services to meet a specific or an unusual requirement. When orders in excess of $500 are placed at other than the lowest Schedule price, the purchasing office shall include in the contract file a memorandum containing the facts justifying the order. The justification may be based on considerations such as delivery time and administrative expense. When the order is to fulfill a specific or an unusual need, it shall, in addition to any other basis for justification, state the unusual or specific requirements such as differences in performance characteristics, and compatibility with existing equipment or systems.

(b) *Procurement of Articles of Foreign Origin for Use in the United States.* When purchase of an item of foreign origin is specifically required, the using activity shall furnish the procuring activity sufficient information to permit the determinations required by Section VI to be made.

5-107 Oral Orders Under Federal Supply Schedule Contracts.

(a) *Oral Orders Not to Exceed $10,000.*

(1) *General.* Purchasing offices are authorized to make procurements not in excess of $10,000 by oral orders from Federal Supply Schedule contractors. Ordering activities shall obtain an agreement from the contractor that for each shipment under an oral order he will furnish a delivery ticket, in the number of copies required by each purchasing office, which shall contain the following information:

(i) contract number;
(ii) order number under the contract;
(iii) date of order;
(iv) name and title of the person placing order;
(v) itemized listing of supplies or services furnished; and
(vi) date of delivery or shipment.

(2) *Payment.* Optional methods of invoicing are permissible. An individual invoice accompanied by a receipted copy of the related delivery ticket may be submitted for payment. Alternatively, a summarized monthly invoice covering all oral orders made during the month, accompanied by a receipted copy of each delivery ticket or a statement by the contracting officer that the supplies have been received by the Government, may be submitted for payment. The monthly billing procedure is preferred when numerous oral orders may be placed.

(b) *Imprest Funds (Petty Cash Method).* In buying commodities where cash payment is advantageous, the imprest funds method (see 3-607) is authorized, *provided* the order does not exceed $150 ($300 under emergency conditions) and the contractor agrees to such a procedure.

5-108 Administration of Orders Under Federal Supply Schedule Contracts.

(a) *Responsibility of DoD activities.* DoD activities have primary responsibility for contract administration functions incident to the performance of orders under Federal Supply Schedule Contracts and, unless otherwise specified in this paragraph, shall deal directly with the contractor concerned. Such functions include:

(i) inspection and acceptance of supplies and services (see Section XIV);
(ii) modification of orders;
(iii) termination of orders for default and charging contractors with resulting excess costs; and
(iv) termination of orders for the convenience of the Government.

In the administration of orders under Federal Supply Schedule Contracts, DoD activities shall be governed by the terms of the related contract as evidenced by the applicable Federal Supply Schedule and by the General Provisions for Federal Supply Schedule Contracts.

(b) *Defective Supplies or Services.* If a Federal Supply Schedule contractor tenders delivery of defective supplies or services, the DoD activity pursuant to the Inspection clause contained in the Federal Supply Schedule Contract, has the right to reject such defective supplies or services or to require their correction. If the contractor refuses to replace or correct within the required delivery schedule, the DoD activity then may require delivery of such defective supplies or services at an equitable reduction in price or may terminate the order in whole or in part for default. The DoD activity shall notify the General Services Administration regional office executing the contract of all significant incidents of delivery of defective supplies and services.

(c) *Termination for Default.*

(1) *General.* Purchasing offices may terminate for default orders under Federal Supply Schedule Contracts and repurchase the terminated items against the contractors' accounts in accordance with the terms of the Default clause in the contracts and pursuant to the procedures set forth in Section VIII, Part 6. Purchasing offices do not have the authority to terminate the Federal Supply Schedule Contract itself. Notices of termination for default shall be sent to all activities having copies of the order being terminated and to the GSA Regional Office which entered into the Federal Supply Schedule Contract.

(2) *Repurchase Against Contractor's Account.* When orders are terminated for default, the items, if listed on a mandatory schedule and still required, shall be reordered against another current applicable Federal Supply Schedule Contract unless the repurchase can be made more economically from a source other than a supply schedule, price, delivery service and administrative expenses considered. If the item is not on a mandatory schedule, the repurchase shall be made at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies are required. Copies of all repurchased orders under a Federal Supply Schedule Contract, except those furnished to the contractor or any other commercial concern, shall bear the notation: "Repurchase against the account of .... under Contract ....". A repurchase against the account of a defaulted contractor shall contain the same accounting data as the terminated order, unless the appropriation cited thereon will not be available for expenditure on the repurchase contract or order, in which case the repurchase must be supported by a new purchase request.

(3) *Excess Costs.* If the repurchase price is higher than the price of the supplies terminated, the purchasing office shall make a written demand on the contractor for the difference, giving due consideration to any increases or decreases in other ascertainable costs such as transportation and discounts, and shall request payment thereof to the office designated for contract administration. The purchasing office shall forward the checks to the cognizant disbursing activity. If the defaulted contractor disputes his liability for excess costs, the purchasing office may postpone the assessment of such costs until the decision of the GSA contracting officer has been rendered (see (e) below) and any appeal therefrom has been decided. Copies of all correspondence relating to excess costs shall be sent to the GSA Regional Office which entered into the Federal Supply Schedule Contract. Purchasing offices shall report unsuccessful attempts to collect excess costs to the Deputy Regional Director of the Federal Supply Service, at the GSA Regional Office which executed the Federal Supply Schedule Contract involved, which office will, in the absence of available offset in that office, submit such data to the General Accounting Office for collection. Reports shall be made within 60 days from the date of final payment to the new contractor from whom the repurchase was made. Such reports, which may be in letter form, shall include the following:

(i) name of the defaulting contractor;
(ii) contract number;
(iii) order number;
(iv) item number and description;

BEST DOCUMENT AVAILABLE

(v) schedule price;
(vi) amount of excess costs to be collected;
(vii) name of the successor contractor;
(viii) purchase price under the new contract;
(ix) order number or numbers on which payment was made; and
(x) new contract number, if any.

(4) *Termination for Default by the General Services Administration.* When notified by the General Services Administration that it has partially or completely terminated a Federal Supply Schedule Contract for default, purchasing offices shall, as to the terminated items:

(i) refuse to accept further performance from the contractor;
(ii) place no further orders under the contract; and
(iii) repurchase in such manner as may be directed by the General Services Administration.

(d) *Termination for Convenience of the Government.* While Federal Supply Schedule Contracts do not include a clause authorizing termination for convenience of the Government, DoD activities may terminate orders under such contracts when such action is in the best interests of the Government, as when the supplies are no longer needed. In contemplating such action, consideration should be given to the fact that the Government may be liable to the contractor for damages, particularly when the terminated supplies are not standard commercial items or "off-the-shelf" articles. Prior to terminating orders for the convenience of the Government, DoD activities shall consult legal counsel and shall endeavor to enter into a "no cost" cancellation agreement with the contractor. Notices of termination of orders for the convenience of the Government shall be in writing and be distributed to all activities having copies of the order and to the GSA Regional Office which entered into the Federal Supply Schedule Contract.

(e) *Disputes.* All disputes concerning questions of fact arising under Federal Supply Schedule Contracts which cannot be satisfactorily settled by the DoD activity and the contractor shall be decided, in accordance with the Disputes clause contained therein, by the cognizant General Services Administration contracting officer executing the contract.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 2—Procurement From General Services Administration Sources

5-200 Applicability. This part applies to the procurement of supplies available from General Services Administration stock for delivery in the contiguous United States including the satisfaction of overseas requirements when such requirements are routed to facilities in the contiguous states for supply action in accordance with instructions prescribed by the Departments. This part may be applied optionally in Alaska and Hawaii. It does not apply in any event to any order which amounts to $25.00 or less, or to:

(i) any subsistence or medical item which is under the cognizance of the Defense Personnel Support Center;
(ii) any item which is being purchased for resale; or
(iii) any item used by commissaries for operation and maintenance that is available through local purchase at a price lower than from GSA stock.

This Part also applies to the mandatory use of General Services Administration services and term contracts for the maintenance, repair, rehabilitation, and reclamation of all personal property described in 5-206, in the United States, Puerto Rico and the Virgin Islands. Services of this type which are available from Federal Prisons Industries and Agencies for the Blind will be procured under the provisions of Parts 4 and 5 of this Section.

5-201 Procurement From General Services Administration Stock. It is the policy of the Department of Defense that for an item which has been decentralized for local purchase and which is available from the General Services Administration stock, such items will be ordered from GSA unless delivery requirements cannot be met. The mandatory provisions of Department of Defense, General Services Administration Interagency Purchase Assignments (5-1201.8) are not applicable to decentralized items which are within these assignments and which are available from the stock. Such items will be ordered in accordance with the above stated policy.

5-202 GSA Supply Catalog. The General Services Administration Supply Catalog sets forth, among other things, information with respect to some of the items of supply carried in stock, prices, and delivery information, and a listing of the General Services Administration regional offices. The catalogs do not list all of the items carried in stock. Items within the classes assigned to GSA in accordance with DoD/GSA agreements and not recorded in the management data lists of the Federal catalog publications as managed by another service or agency and not recorded for decentralized procurement, should be requisitioned from GSA. Copies of the GSA Supply Catalog may be obtained by completing GSA Form 457 (FSS Publications Mailing List Application) and mailing it to the GSA Centralized Mailing Lists Service, Building 41, Denver Federal Center, Denver, Colorado 80225. GSA Form 457 may be obtained from the GSA Centralized Mailing Lists Service by letter or by telephoning 303-234-4195.

5-203 General Services Administration Regional Offices. The General Services Administration regional offices located in the cities listed below, serve the areas indicated in the GSA Supply Catalog guide. The addresses shown are the mailing addresses to which all orders and correspondence should be forwarded.

GSA Region	*Address*
1. Boston, Ma.	Post Office Box 2144 Boston, Ma. 02106
2. New York, N.Y.	26 Federal Plaza, New York, N.Y. 10007
3. Washington, D. C.	7th and D Streets, S.W., Washington, D.C. 20407.
4. Atlanta, Ga.	1776 Peachtree Street, N.W., Atlanta, Ga. 30309
5. Chicago, Il.	230 S. Dearborn Street, Chicago, Il. 60604
6. Kansas City, Mo	1500 East Bannister Road, Kansas City, Mo. 64131
7. Fort Worth, Tx.	819 Taylor Street, Fort Worth, Tx. 76102
8. Denver, Co.	Denver Federal Center, Bldg. 41, Denver, Co. 80225.
9. San Francisco, Ca.	525 Market Street San Francisco, Ca. 94105
10. Auburn, Wa.	General Services Administration Center, Auburn, Wa. 98002.

5-204 Order for Supplies. Orders for supplies from the General Services Administration shall be submitted in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) (DoD 4140.17-M).

5-205 Mandatory Sources for Maintenance, Repair, Rehabilitation and Reclamation of Personal Property. General Services Administration regional offices provide facilities for maintenance, repair, rehabilitation and reclamation of Government-owned personal property and, in addition, have Term Contracts with commercial concerns for similar services. These contracts are published as General Services Term Contracts. When requirements exceed the in-house capabilities of a Departmental activity or installation, or it is otherwise required that outside sources be used, it is mandatory that General Services Administration sources for such services be used except when:

(i) the items involved are military weapons systems, specialized military support equipment, or specialized technical or scientific equipment;

(ii) such services are available from the Federal Prison Industries or Agencies for the Blind or Other Severely Handicapped (see Parts 4 and 5);

(iii) the required services are covered by warranty or other pre-existing contract;

(iv) delivery requirements for repair and refinishing services cannot be met (the provisions of 5-102.2 are applicable when determining whether a General Services Administration source can meet the delivery requirements);

(v) the required services are not within the scope of the existing GSA Term Contract or a waiver is first obtained from the GSA regional Property Management and Disposal Service office administering the contract (Such waivers are not required when the exigency of the procurement will not permit delay. However, telephonic clearances will be given by GSA in appropriate cases.); and

(vi) the requiring activity is outside the geographic area covered in the GSA Term Contract. (Normally, this area extends no more than a 15-mile radius from the contractor's location. Each contract specifies the area covered which may in some cases extend beyond that distance.)

5-206 Personal Property Covered Under Mandatory GSA Term Contracts. The items of personal property listed below are indicative of those for which General Services Administration sources are mandatory for maintenance, repair, rehabilitation, and reclamation services. They are not all inclusive. For detailed listings see the latest Federal Supply Catalog entitled "Guide to Sources of Supply and Service." Copies are available from GSA Regional Office and should be obtained by each installation and activity that may have need of such services. Copies of existing GSA Term Contract for these services are routinely forwarded by each GSA Regional Office to all affected Government activities within the respective regions.

Sample List of Items

Adders, calculators, and comptometers
Fire extinguishers (Industrial and Commercial)
Furniture (Office, household, quarters,
    institutional and hospital type)
Household appliances
Mattresses
Motors and generators (Industrial and Commercial)
Tires (Except for Aircraft)
Typewriters (Manual and electric)
Watches and clocks (Industrial and Commercial)

5-207 Order for Services. Orders for maintenance, repair, rehabilitation, or reclamation services from General Services Administration sources shall be placed as follows:

(a) *GSA Repair Facility.* A delivery order on Order for Supplies or Services/Request for Quotations (DD Form 1155) (see 3-608.6) shall be submitted to the General Services Administration regional office which normally serves the procuring activity. Each delivery order which is subject to fiscal year limitations necessitating GSA procurement action to be completed not later than June 30 shall contain a notation to that effect.

(b) *Commercial Sources.* Delivery orders on DD Form 1155 will be placed directly with contractors pursuant to GSA Term Contracts.

(1) *Inspection and Acceptance.* Arrangements for inspection and acceptance shall be the responsibility of the ordering agency, except when the GSA Term Contract specifically provides for source inspection by GSA.

(2) *Default Terminations.* The GSA contracting office shall be notified each time an order is terminated for default in accordance with contract provisions.

Part 3—Reserved

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 4—Procurement From Federal Prison Industries, Inc.

5-400 Applicability. This Part is applicable to supplies and services unless they are both procured and used or performed outside the United States.

5-401 General. Supplies and services of the classes listed in the "Schedule of Products Made in Federal Penal and Correctional Institutions" (referred to in this Part 4 as the "Schedule") shall be purchased in accordance with the policies and procedures set forth in this Part.

5-402 Preference as Between Supplies and Services Available From Federal Prison Industries, Inc. and From Agencies of the Blind and Other Severely Handicapped.

(a) Federal Prison Industries, Inc. shall have preference when supplies are contained in both the Schedule and the Procurement List of Supplies and Services Provided by the Blind and Other Severely Handicapped (see 5-502(f)).

(b) Agencies for the blind and other severely handicapped shall have preference when services are contained in both the Schedule and the Procurement List (see 5-405 and 5-502(e).

5-403 The Schedule. Supplies and services which are manufactured or performed by Federal penal and correctional institutions are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from Federal Prison Industries, Inc., c/o Department of Justice, Washington, D.C. 20537.

5-404 Mandatory Procurement of Prison-Made Supplies.

5-404.1 Mandatory Procurement From Federal Prison Industries, Inc.

(a) Supplies listed in the Schedule shall be procured directly from Federal Prison Industries, Inc., using the procedures set forth in the Schedule, when:

- (i) the supplies are in classes assigned to GSA for procurement as listed in 5-1201.8; and:
  - (A) require overseas packaging and packing;
  - (B) are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned;
  - (C) are required in less than carload lots, but are not stocked by General Services Administration Stores Depots; or
  - (D) meet the exception criteria set forth in 5-1201.2(a);
- (ii) the supplies are in classes assigned to DoD activities for coordinated procurement and meet the purchase exception criteria set forth in 5-1201.1 or 5-1201.2.

(b) Supplies listed in the Schedule which are in GSA assigned classes and which do not meet the exceptions in (a)(i) above, shall be ordered from GSA.

(c) Supplies listed in the Schedule which are in classes assigned to DoD activities for coordinated procurement and which do not meet the exceptions referenced in (a)(ii) above, shall be ordered from the coordinated procurement assignee. The coordinated procurement assignee shall procure such items in accordance with the procedures set forth in the Schedule.

5-404.2 *Mandatory Procurement of Prison-Made Supplies From General Services Administration Stores Depots.* Supplies listed in the Schedule which are required in less than carload lots and which are stocked by General Services Administration Stores Depots shall be procured from such Depots, except that procurement shall be made directly from Federal Prison Industries, Inc., when:

(i) the procuring activity or installation is so located that it is more practical and economical to procure directly from Federal Prison Industries, Inc., rather than from or through the General Services Administration; or

(ii) the General Services Administration Stores Depot is temporarily unable to furnish the required supplies, in which instance the Depot will so advise the procuring activity or installation so that the procurement may be made directly from Federal Prison Industries, Inc.

5–405 Nonmandatory Procurement of Prison-Made Supplies and of Services. Contracting Officers are encouraged to utilize the facilities of Federal Prison Industries, Inc., to the maximum extent practicable in the procurement of (i) supplies which are not listed in the Schedule, but which are nevertheless of a type manufactured in Federal penal and correctional institutions, and (ii) in the procurement of services which are listed in the Schedule. However, such purchases shall be made only when the prices of Federal Prison Industries, Inc. do not exceed current market prices. Current market prices obtained informally, established catalog prices, recent procurement prices, or as a last resort prices obtained by informational quotations as provided in 1–309 may be used to ascertain whether procurement can be effected more cheaply from commercial concerns. Formal solicitations shall not be used to determine whether or not the price of Federal Prison Industries, Inc. exceeds that of commercial concerns.

5–406 Procurement Procedure.

5–406.1 *Procurement From Federal Prison Industries, Inc.* Procurement directly from Federal Prison Industries, Inc. will be made by placing a delivery order using DD Form 1155 (Order for Supplies or Services) (see 16–303), with Federal Prison Industries, Inc., c/o Department of Justice, Washington, D. C. 20537.

5–407 Exceptions. Supplies listed in the Schedule may be procured through agencies for the blind and other severely handicapped or from commercial sources, as applicable (see 5–505), without securing clearance from Federal Prison Industries, Inc. under any of the following conditions:

(i) immediate delivery or performance is required by public exigency;

(ii) suitable used supplies can be obtained; or

(iii) the total cost of the order is $25. or less.

5–408 Clearances. In addition to the exceptions provided in 5–407, the Departments may procure through agencies for the blind and other severely handicapped,or from commercial sources supplies of the types listed in the Schedule only to the extent that such procurement is specifically authorized in clearances issued by Federal Prison Industries, Inc., as set forth in (a) and (b) below.

(a) General clearances are issued by Federal Prison Industries, Inc. when classes of supplies are not available from Federal penal and correctional institutions, or when it is otherwise in the best interest of the Government to allow procurement of those classes of supplies from agencies for the blind and other severely handicapped or from commercial sources. A copy of each general clearance is forwarded to the Department of Defense for dissemination to the Departments.

(b) Formal clearances are issued in response to requests initiated by procuring activities or installations desiring to procure from agencies for the blind and other severely handicapped or from commercial sources supplies of the type listed in the Schedule when such supplies are not covered by a general clearance. Requests for formal clearances shall be addressed to Federal Prison Industries, Inc., c/o Department of Justice, Washington, D. C. 20537. Actual purchase of the required supplies shall not be consummated prior to the issuance of the formal clearance.

Part 5—Procurement From The Blind And Other Severely Handicapped

5-500 Applicability. This Part is applicable to supplies and services which are required to be procured from agencies for the blind and other severely handicapped.

5-501 General.

(a) The Committee for Purchases from the Blind and Other Severely Handicapped, hereinafter referred to as the Committee, was established by the Wagner O'Day Act (52 Stat. 1196) (41 U.S.C. 46-8) dated June 25, 1938, as amended by Public Law 92-28, (85 Stat. 77) dated June 23, 1971. The Committee is an independent activity with members appointed by the President of the United States.

(b) The Committee is responsible under the Act for determining those supplies and services which shall be procured by all entities of the U.S. Government from agenices for the blind and other severely handicapped, and the prices which shall be paid for the supplies and services, and for establishing such rules and regulations as are necessary to administer the Act. The rules and regulations of the Committee are published in the Code of Federal Regulations, Title 41, Chapter 51 - Committee for Purchases from the Blind and Other Severely Handicapped.

(c) It is the policy of the Department of Defense to cooperate with and to assist the Committee as requested in carrying out its responsibility under the Act for determining the supplies and services which shall be procured, and the prices therefor (see 5-506).

5-502 Procurement List of Supplies and Services Provided by the Blind and Other Severely Handicapped.

(a) All supplies and services provided by agencies for the blind and other severely handicapped which are required to be procured by all entities of the Government are listed in the Procurement List of Supplies and Services Provided by the Blind and Other Severely Handicapped, hereinafter referred to as the Procurement List. Copies of the Procurement List may be obtained by submission of GSA Form 457 to the General Services Administration, Bldg. 41, Denver Federal Center, Denver, CO, 80225. Mailing Code 00SC-0002 is applicable.

(b) Items which are available from stocks at General Services Administration Stores Depots and through the Defense Supply Agency system are so identified.

(c) The central nonprofit agency for the blind or other severely handicapped that is responsible for providing each item or service on the list is specified by use of an identifying symbol.

(d) Military Resale Commodities which are available only for resale through authorized resale outlets are separately identified.

(e) Agencies for the blind and other severely handicapped shall have preference when services are contained in both the Procurement List and the Schedule of Products Made in Federal Penal and Correctional Institutions (see 5-402).

(f) *Limitation*. Federal Prison Industries, Inc. shall have preference when supplies are contained in both the Schedule and the Procurement List (see 5-402). The Procurement List identifies those supplies for which a formal clearance (see 5-408(b)) must be given by Federal Prison Industries, Inc., to the purchasing office before any action may be taken to procure from an agency for the blind or other severely handicapped, unless one of the exceptions cited in 5-407 is applicable.

5-503 Mandatory Procurement of Supplies and Services of the Blind and Other Severely Handicapped. Except as provided in 5-502(f) and 5-505, supplies and services listed in the Procurement List shall be procured as follows:

(a) Centrally managed supplies and services, and locally procured services, shall be procured in accordance with the procedure specified in 5-504.1.

(b) Requirements for supplies which have been decentralized for local purchase shall be submitted to the General Services Administration Stores Depot which can best serve the procuring activity or installation (see 5-504.2), except that when one of the conditions set forth below is present, procurement shall be in accordance with the procedure specified in 5-504.1:

(i) supplies require overseas packaging or packing;

(ii) supplies are required in carload lots, as described in the Consolidated Freight Classification for the commodity concerned;

(iii) supplies are stocked by General Services Administration Stores Depots, but the procuring activity or installation is so located that it is more practical and economical to purchase directly from the agency for the blind or other severely handicapped which manufactures the supplies, rather than from the stores depot;

(iv) the Procurement List indicates that the supplies are not stocked by General Services Administration Stores Depots; or

(v) delivery requirements cannot be met.

(c) Military resale commodities will be ordered by authorized resale outlets in accordance with the instructions of the central nonprofit agency designated in the Procurement List. Instructions will be provided upon request to that agency to designate the workshop to which orders shall be forwarded. Authorized resale outlets are not prohibited by this regulation from stocking comparable brand name items procured from commercial sources, provided that the comparable military resale items on the Procurement List are also stocked.

5-504 Procurement Procedure.

5-504.1 *Through an Agency for the Blind or Other Severely Handicapped.*

(a) *Allocation Process.*

(1) When a firm requirement exists, a letter request for allocation (*i.e.*, the designation of a workshop or workshops to manufacture the supplies or perform the service) shall be submitted to the central nonprofit agency designated in the Procurement List. Sufficient administrative and production leadtime shall be allowed for the nonprofit agency to reply and for the order to be placed to meet the required delivery schedule.

(2) The request for allocation shall provide the following information to the central nonprofit agency:

a. For Supplies:

1. Nomenclature, stock number, latest specification, quantity, unit price, date or dates delivery is required, and destinations to which delivery (by quantity) is to be made if destination is pertinent to the price. *Note: As it is not feasible to show the latest specification revision in the Procurement List, only the basic specification is referenced. Accordingly, the latest applicable specification will be cited on the request for allocation, but see 5-509.*

2. Packing, packaging or marking, if other than the standard as required by the specification cited on the Procurement List, or as otherwise provided in the Procurement List. (Any cost difference shall be agreed to between the central nonprofit agency and the ordering office and shall be set forth separately in the resulting order.)

b. *For Services:* Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) *Revised Delivery Requirements.* A request by a central nonprofit agency for revision in a delivery schedule should be granted if feasible. If a requested revision cannot be granted for all, or part, of a requirement, the central nonprofit agency shall be notified immediately and requested to grant a purchase exception to procure from commercial sources for that portion of the requirement which cannot be extended (see 5-505).

(4) Upon receipt of an allocation, the purchasing office shall promptly issue a delivery order to the specified workshop or workshops, or to the central nonprofit agency, as instructed by the allocation. If issuance of a delivery order is to be delayed for more than 15 days beyond receipt of the allocation, or if the requirement must be canceled, the central nonprofit agency is to be advised immediately.

(b) *Direct Order Process.* Central nonprofit agencies may authorize the issuance of delivery orders direct to designated workshops for specified supplies or services. Such authorizations may be given to the applicable procurement agency at the time of the addition of the item or service to the Procurement List, or at any time subsequent to the submission of an allocation request. The central nonprofit agency will specify the normal delivery or performance leadtime required by the workshops. This leadtime shall be adhered to by the purchasing agency when issuing direct orders.

(c) DD Form 1155 shall be used as a delivery order under (a) or (b) above. Such orders may be issued without limitation as to dollar amount and shall be recorded as obligations upon issuance. Purchase terms are specified by the regulations of the Committee (41 CFR Chapter 51), however, instructions necessary for performance under the order, *e.g.*, the handling of any Government furnished property or shipment of the supplies, may be added as applicable.

5-504.2 *From General Services Administration Stores Depots.* The DD Form 1348 series shall be used to obtain blind-made and severely handicapped made supplies from General Services Administration Stores Depots.

5-505 Purchase Exceptions.

(a) A purchasing office may procure supplies or services listed in the Procurement List from commercial sources only to the extent that such procurement is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) Purchase exceptions will be granted by the central nonprofit agency when both of the following conditions are met:

(i) the commodity or service cannot be provided by the workshops within the time period required; and

(ii) the commodity or service is available from other sources in the quantities and at an earlier time than is available from workshops.

(c) Purchase exceptions may be granted by central nonprofit agencies whenever the quantity required is insufficient for economical production or provision by the workshops.

(d) Purchase exceptions will be provided promptly by the central nonprofit agency and will specify the quantities and delivery or performance period covered by the exception. When an exception is granted under (b) above:

(i) purchase action shall be initiated within 15 days following the date of the exception, or as may be extended by the central nonprofit agency; and

(ii) a copy of the solicitation shall be provided the central nonprofit agency at the time it is issued.

5-506 Prices.

(a) The prices included in the Procurement List are fair market prices established by the Committee. DoD purchasing activities having responsibility for procurement of commodities or services will generally be requested by the Committee to assist in establishing fair market prices when a new commodity or service is proposed by a central nonprofit agency for addition to the Procurement List or when a price revision has been requested by a central nonprofit agency. It is within the Committee's authority, however, to establish prices without prior coordination with the responsible procurement agency. When assistance has been requested by the Committee, and a purchasing activity does not agree with an initial price or price revision requested by a central nonprofit agency, the nonconcurrence to the Committee, with the recommended price and the basis therefor, will be forwarded through:

(i) *for the Army:*
Headquarters, U.S. Army Materiel Development & Readiness Command,
Attn: DRCPP-SC
5001 Eisenhower Avenue
Alexandria, VA 22333

(ii) *for the Navy:*
Headquarters Naval Supply Systems Command
Attn: SUP 02
Washington, DC 20390

(iii) *for the Air Force:*
Headquarters, U.S. Air Force,
Directorate of Contracting and Acquisition Policy,
Attn: RDCL
Washington, DC 20330

(iv) *for the Defense Logistics Agency:*
Headquarters, DLA,
Executive Director for Purchasing,
Attn: DLA-P
Alexandria, VA 22314

(b) Recommendations for price revisions for commodities or services on the Procurement List may be made at any time to the Committee by responsible procuring activities. Such recommendations will be forwarded to the Committee through the offices listed in (a) above.

(c) Price changes for commodities and services shall apply to orders received by the workshop on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the workshop before the effective date of the change.

5-507 Payments. Payments for products or services of the blind or other severely handicapped shall normally be made within 20 days, but in no event later than 30 days, after delivery or receipt of a correct invoice.

5-508 Compliance with Delivery Orders.

(a) Supplies and services provided by the blind and other severely handicapped workshops shall be in accordance with applicable Government specifications and standards as cited in the delivery order. When no specification or standards exist, supplies will be of the highest quality and equal to similar items available on the commercial market, and services shall be performed in accordance with good commercial practices.

(b) Other terms of the delivery order (*e.g.*, packing, marking, dates of delivery or performance) shall be as agreed to during one of the processes described in 5-504.1(a) or (b).

(c) If a workshop fails to perform in accordance with the terms of an order, the purchasing office shall make every effort to resolve the noncompliance with the workshop involved and to negotiate an adjustment before taking action to cancel the order. However, if a problem related to the quality of the item or of performance of a service cannot be resolved with the workshop, the matter will be referred for resolution to the central nonprofit agency and the Committee. When an order is canceled for failure to comply with its terms, the central nonprofit agency shall be notified, and requested to reallocate the order if practicable. When reallocation cannot be accomplished, a purchase exception will be given by the central nonprofit agency to procure from commercial sources.

5-509 Optional Procurement of Supplies or Services From Blind or Other Severely Handicapped Activities.

(a) Supplies and services not contained in the Procurement List may be procured from an agency or workshop of the blind and other severely handicapped when such activity is the low responsive, responsible offeror under a solicitation issued in accordance with other authorized procurement methods.

(b) When it is known that any of the agencies listed in the Procurement List is or may be qualified to furnish supplies or services which are not on the Procurement List, solicitations shall be forwarded to such agency.

5-510 Procuring Activity Actions With the Committee. Any matters required by these regulations to be referred to the Committee will be addressed to the Executive Director of the Committee at the address contained in the current issue of the Procurement List.

Part 6—Procurement of Printing and Related Supplies

5-601 Printing and Related Supplies. Printing, binding, and blank-book work, and envelopes, paper, and related supplies shall be procured in accordance with (i) regulations of the Congressional Joint Committee on Printing, and (ii) procedures prescribed by each respective Department. For example, printing requirements (*e.g.*, reproducible masters, camera-ready copy in page format, page lithographic negatives, etc.) for technical manuals and other publications (not commercial manuals or technical manuals in manuscript form) may not be procured as an integral part of a contract for supplies or services unless approval has been obtained from the Congressional Joint Committee on Printing or the Public Printer. Responsibility within each Department for obtaining waivers and for dealing with the Congressional Joint Committee on Printing and the Public Printer on matters relating to printing is vested in one specifically designated office or agency. In the Army, this responsibility is vested in The Adjutant General; in the Navy, in the Director, Navy Publications and Printing Service; in the Air Force, in the Director, Administrative Services, Headquarters, USAF; in the Defense Supply Agency, in the Staff Director, Administration, Headquarters, DSA; in the Defense Communications Agency, in the Assistant to the Director for Administration; in the Defense Nuclear Agency, in the Personnel Administration Directorate; in the Defense Mapping Agency, in the Deputy Director, Programs, Production and Operations.

Part 7—Procurement Under the Economy Act

5-700 Scope of Part. This Part deals with orders for supplies or services placed with another Government department or agency pursuant to the authority of the Economy Act of June 30, 1932, as amended (31 U.S.C. 686), except that it does not apply to any procurement covered by the other parts of this Section V. Orders for supplies and services placed *within* a Department shall be in accordance with procedures prescribed by that Department.

5-701 Authorization and Policy Relating to Placing and Filling Orders.

(a) It is the policy of the Department of Defense not to place Government agencies in direct competition with commercial sources (but see Section IV, Part 12). Invitations for bids and requests for proposals shall not be sent to Government agencies.

(b) Each procuring activity, when it is in the interest of the Government to do so, may place delivery orders on DD Form 1155 (see 3-608.6) with any other Government department or agency for supplies or services that any such requisitioned department or agency may be in a position to furnish or perform or to obtain by contract. Generally, an order for supplies or services will not be placed with a department or agency which is not in a position to furnish the supplies or is not equipped to perform the services, except that an order may be filled by means of an outside contract with a commercial source of supply if the order is placed by any one of the following: Department of the Army, Department of the Navy, Department of the Air Force, Department of the Treasury, Federal Aviation Administration, or Maritime Commission. An order for services shall not be placed with a department or agency when such services can be performed as conveniently or more cheaply by private contractors.

5-702 Determination of Amount and Method of Payment. Upon the written request of the requisitioned department or agency, an advance by check shall be made of all or part of the estimated cost of furnishing the supplies or services as specified by such requisitioned department or agency; *provided* that, where an advance is made, proper adjustments of the basis of the actual cost of the supplies or services shall be made as may be agreed upon by the departments or agencies concerned. Subject to approval by the requisitioned department or agency, payment by check may be made after the furnishing of the supplies or services. The amount to be paid shall be based on the actual cost of the supplies or services as may be agreed upon by the departments or agencies concerned.

5-703 Procuring Helium Under Public Law 86-777.

It is the policy of the Department of Defense to obtain its requirement of helium as follows:

(i) bulk helium requirements (tank car lots) shall be procured either directly from the Department of Interior (Bureau of Mines) or from private helium distributors which establish and maintain their eligibility in accordance with Bureau of Mines Regulations. Copies of the current list of eligible private helium distributors may be obtained from the Bureau of Mines, Helium Operations, P. O. Box H4372 Herring Plaza, Amarillo, Texas 79101;

(ii) helium in cylinders or trailers shall be procured from the Department of Interior (Bureau of Mines) either direct or through General Services Administration Federal Supply Schedule contracts.

Department of Defense activities will make a determination annually as to whether or not helium in cylinders and trailers will be obtained directly from the Bureau of Mines or through Federal Supply Schedules. If a determination is made that it is more economical to obtain such helium through Federal Supply Schedules, the estimated requirements will be processed to GSA. Once estimated requirements are processed to GSA, the resultant Federal Supply Schedule (FSG 68, Part III, Section G) is mandatory on the requiring activities for the contract period.

5-704 Procurement From Energy Research and Development Administration.

5-704.1 *General.* This paragraph covers the procurement of material and supplies from the Energy Research and Development Administration (ERDA).

5-704.2 *Procurement of Radioisotopes.*

(a) ERDA Form 375 "*U.S. ERDA Isotope Order Blank*", and NRC Form 313, "*NRC Application for Byproduct Material License*", shall be used for the procurement of radioisotopes from any of the three ERDA laboratories listed on the back of ERDA Form 375. No other type of order blank, purchase order, or contract shall be used in lieu of these forms.

(b) In the procurement of radioisotopes, NRC Form 313 shall be filed with the Chief, Radioisotopes Licensing Branch Division of Fuel Cycle And Material Safety United States Nuclear Regulatory Commission, Washington, D. C. 20555. If the application meets all regulatory requirements and applicable standards, NRC Form 374, "*U.S. Nuclear Regulatory Commission Materials License*", will be issued to the applicant by the Radioisotopes Licensing Branch, Nuclear Regulatory Commission. After receipt of the NRC Form 374, a complete ERDA Form 375 (in duplicate, if the purchasing office desires to receive an accepted copy of the form back from the supplier), the license (NRC Form 374), and a Standard Form 1103, "*U.S. Government Bill of Lading*", shall be sent to the appropriate *ERDA* laboratory. If a bill of lading is not furnished, shipment shall be made collect on a commercial bill of lading, to be converted at destination.

(c) The "*Terms and Conditions*" on the reverse side of the ERDA Form 375 shall control all requisitions for radioisotopes purchased by the Departments from the Energy Research and Development Administration National Laboratories.

(d) NRC Form 313, "*NRC Application for Byproduct Material License*", and ERDA Form 375, "*U.S. ERDA Isotope Order Blank*", shall be requisitioned directly from: *United States Nuclear Regulatory Commission, Attn: Radioisotopes Licensing Branch, Division of Fuel Cycle and Material Safety*, Washington, D.C. *20555.*

5-705 Procurement of Materials From Surplus Strategic and Critical Materials Stockpile.

5-705.1 *General.* The General Services Administration has responsibility for the disposition of strategic and critical materials which are in excess of national stockpile requirements. These materials are primarily metals, ores, chemicals and similar raw material items, and are listed and described in a GSA Bulletin which is disseminated to procuring activities through Departmental channels.

5-705.2 *Procurement of Listed Materials.* Prior to initiating procurements of materials which are listed as being available for transfer from the General Services Administration, the procuring activity should screen the list to determine whether the requirement may be met through transfer of materials from the GSA. Due consideration should be given to the quantity, quality and location of the material, and to the timeliness of its availability. Detailed information on these excess materials is available from the Property Management and Disposal Service, General Services Administration, Washington, D.C. 20405.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Part 8—Procurement of Utility Services Using GSA Area Contracts

5-800 Applicability. This Part is not applicable to the procurement of utility services outside the United States.

5-801 General. The General Services Administration enters into areawide contracts with various utility suppliers for the furnishing of utility services (including electricity, natural and manufactured gas distributed by pipes, stream, sewerage, and water) to Federal agencies located within the service areas of such suppliers. GSA areawide contracts provide that the utility supplier, upon execution of a Government order in the form of an authorization prescribed by the contract, will furnish, without further negotiation, the services involved in accordance with such of the supplier's rate schedules as are applicable to such services and subject to all the provisions of the areawide contract.

5-802 Distribution of Lists and Copies of GSA Areawide Utility Contracts. Upon request, GSA will furnish to Federal agencies a list of GSA areawide public utility contracts showing in each case the kind of utility service, the serving utility, and the area served. GSA also will make available to Federal agencies, upon request, a copy of any areawide contract. Each contract includes the specimen order form authorizing service connection, disconnection, or change. Requests should be made to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-803 Department of Defense Use of GSA Area Contracts.

(a) DoD activities in areas covered by a GSA areawide contract shall procure utility services thereunder, unless it is determined that more advantageous competing services are available; however, when it is in the best interests of the Government, DoD activities may negotiate special rates or special services under a GSA areawide contract or under a separate contract. In determining whether it is in the best interests of the Government to negotiate special rates or special services, consideration should be given to (i) the area contract rates viewed in light of the magnitude of the service required, (ii) any unusual characteristics of the service required, (iii) any special equipment or facility requirements, (iv) any special technical contract provisions required, and (v) any other special circumstances.

(b) When, pursuant to (a) above, a DoD activity determines to procure utility services under a separate contract rather than under a GSA areawide contract, the utility services shall be procured in accordance with Supplement 5 to this Regulation. Such separate contracts shall be reported, upon execution, to the Public Utilities Division, Transportation and Communications Service, General Services Administration, Washington, D.C. 20405.

5-804 Ordering Under Area Contracts. When utility services are procured under GSA area contracts, the method of ordering prescribed in the appropriate GSA Public Utility Schedule shall be used. The form prescribed for ordering may be modified to satisfy fiscal and administrative requirements of the Department concerned, and to contain such additional contract provisions as may be necessary, except that it shall not be modified for use as a public voucher in lieu of Standard Form 1034. Where GSA area contracts do not contain the Gratuities clause (7-104.16), the clause shall be included in the order form.

Part 9—Use of GSA Supply Sources by Prime Contractors

5-900 Scope. This Part prescribes policies and procedures for contracting officers regarding the use of General Services Administration (GSA) supply sources (*i.e.*, items available through Federal Supply Schedule contracts, GSA Nonmandatory ADTS/ADP Schedule contracts, GSA ADP Requirements contracts, and from GSA stock) by contractors in performing certain Government contracts. The term *contractor* as used in this Part, unless the context otherwise requires, includes subcontractors who qualify in accordance with the provisions of 5-902(b). (The use of GSA sources by grantees is not authorized.) This Part is applicable to the procurement of supplies to be delivered in the United States, its possessions, or Puerto Rico.

5-901 Policy.

(a) It is the policy of the General Services Administration to make GSA supply sources available to all eligible users in order to promote greater economy and efficiency in Government procurement programs.

(b) To the extent provided in this Part, the policy is applicable to contractors working wholly or substantially on cost-reimbursement contracts.

5-902 Authorization to Contractors.

(a) When the contracting officer determines that it is in the best interest of the Government to do so, the Department shall authorize in writing its prime contractors and, where appropriate, their subcontractors to utilize GSA supply sources in performing Government contracts. Authorizations to subcontractors shall be issued through, and subject to the approval of, the prime contractor. Each authorization (prime or sub) shall be supported by a written finding of the facts which are the basis for the determination to issue the authorization. Such findings shall be retained in Departmental contract files.

(b) The authorization to utilize GSA supply sources may be issued only where a Department deems it advisable for a contractor to utilize GSA supply sources in performing:

(i) Government cost-reimbursement contracts; and

(ii) other types of negotiated contracts where a Department determines that a substantial dollar portion of the contractor's contracts are of a Government cost-reimbursement nature.

(c) Subject to the criteria set forth in subparagraph (b) of this paragraph 5-902, a Department may include in its written authorizations such limitations or conditions as it deems necessary in the public interest. For example, it may choose to:

(i) authorize purchases from GSA supply sources of any overhead supplies, but no production supplies; or

(ii) limit any authorization requirement to use GSA sources to a specific dollar amount, leaving the contractor free to make smaller purchases from any source he chooses; or

(iii) restrict the authorization to certain plants or facilities or to specific contracts.

The terms and conditions which the Department may impose are not limited to the foregoing examples.

(d) In determining whether to issue such an authorization, consideration should be given, but not necessarily limited to, the following factors:

(i) the administrative cost of placing orders with Government sources, and the program impact of delay factors, if any;
(ii) lower cost of purchased items;
(iii) suitability of items available through GSA supply sources;
(iv) delivery factors such as cost and time; and
(v) recommendations of prime contractors.

(e) Each authorization issued under this Part shall:

(i) cite the number of the contract or contracts involved;
(ii) specify the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and include the DoD Activity Address Code (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544) to which the authorization applies; and
(iii) whenever practicable, contain a limit upon the period of effectiveness of the authorization.

(f) The authorizing Department shall request a DoD activity address code from the service point (see Section I of Introduction to DODAAD. The request shall be in writing and shall contain the in-the-clear address(es) to which mail, freight, and billing documents are to be directed by GSA for the contractor. Address changes shall also be submitted in writing by the authorizing Department as well as deletions when contracts are terminated.

(g) The contracting officer shall be responsible for insuring that prime contractors and subcontractors comply with the terms of their authorizations and for insuring that supplies and services obtained from GSA sources of supply are properly used.

5-903 Orders Under Federal Supply Schedule Contracts, GSA Nonmandatory ADTS/ADP Schedule Contracts, and GSA ADP Requirements Contracts.

(a) Orders placed by Government contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization issued to the contractor. Each order shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor).

(b) In the event a Federal Supply Schedule contractor refuses to honor an order placed by a Government contractor in accordance with Departmental authorization, the contracting officer shall promptly report the facts and circumstances to the General Services Administration, Federal Supply Service, Office of Customer Service and Support-FF, Washington, D. C. 20406.

(c) Orders under GSA nonmandatory ADTS/ADP Schedule contracts and GSA ADP Requirements contracts shall be placed in accordance with the provisions of the applicable contract and 4-1102.4(b) and 4-1104.5, respectively.

5-904 Orders for GSA Stock. Orders placed by Government contractors with GSA shall be placed in accordance with the authorization, using the MILSTRIP format.

5-905 Furnishing Information to Contractors. The contracting officer shall assist the contractors which they have authorized to use GSA supply sources in obtaining pertinent Federal Supply Schedules and the GSA Supply Catalog, and shall furnish them with any other desired information. Such schedules and catalogs may be obtained by submitting a completed GSA Form 457, FSS Publications Mailing List Application, in accordance with the instructions on the form. GSA Form 457 may be obtained from the GSA regional office serving the area in which the requesting activity is located.

5-906 Form of Authorization to Contractors.

SUBJECT: Authorization to Purchase from GSA Supply Sources.
.... (Contractor's Name)
.... (Address)

1. You are hereby authorized to utilize GSA supply sources in performing Contract No. .... for the Department of .... as follows:

The purchasing of property for acquisition under Contract No. .... which is available for purchase by Government agencies either directly from the General Services Administration stock or under Federal Supply Schedules, subject to the limitations set forth herein.

2. a. Purchase Orders Under Federal Supply Schedule Contracts. Orders will be placed in accordance with the terms and conditions of the attached Federal Supply Schedule and this authorization. A copy of the authorization shall be attached to the order (unless a copy was previously furnished to the Federal Supply Schedule contractor) and the order shall contain the following statement:

> This order is placed pursuant to written authorization dated ...., (*................). In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

b. Requirement for Items in the GSA Stock Catalog. Orders will be placed in accordance with the Military Standard Requisitioning and Issue Procedures (MILSTRIP) and this authorization. Bills are not issued by GSA until after shipment has been made and should be paid promptly. Any adjustements necessary will be made by GSA.

3. Other provisions.

4. This authority hereby granted is not transferable or assignable.

5. The DoD Activity Address Directory (DODAAD) (DLAH 4140.1, AR 725-60-1, MCO P4420.2H, CG 364, AFM 75-6, NAVSUP PUB 5544)** Activity Address Code to which this Authorization applies is ....

6. This authorization expires ....

(Contracting Officer) ....

*Insert "a copy of which is attached", or "a copy of which which you have on file", or other suitable language, as appropriate.

**The sponsoring service (see Section I, Introduction to the DODAAD) assumes responsibility for monitoring and controlling all activity address codes utilized in the letters of authority.

5-907 Payment for GSA Shipments. Bills for GSA shipments are not rendered by GSA until after shipment has been made. Receipt of billing is construed as sufficient evidence of delivery to establish Government liability and to provide a basis for payment. Accordingly, agencies should direct their contractors to make payments promptly upon receipt of billings.

5-908 Title. Title to all property acquired from GSA supply sources shall vest in either the Government or the contractor in accordance with the provisions of the "*Government Property*" clause of the contract.

5-909 Contract Clause. Insert the clause set forth in 7-204.28 in all cost-reimbursement type contracts under which the contractor may acquire supplies for the account of the Government. The last sentence of the clause shall be deleted in the case of facilities contracts.

Part 10—Procurement for NASA

5-1001 Authorization and Policy.

(a) NASA is authorized by Public Law 85-568 to use the procurement services, personnel, equipment and facilities of the Departments with their consent, with or without reimbursement, and on a similar basis to cooperate with the Departments in the use of procurement services, equipment and facilities.

(b) The Departments will cooperate fully with NASA in making their procurement services, equipment, personnel and facilities available on the basis of mutual agreement.

(c) The Departments will not claim reimbursement for administrative costs incident to procurements for NASA, except as may be otherwise agreed prior to the time the services are performed.

(d) When procuring supplies or services for NASA or performing field service functions in support of NASA contracts, the Department concerned will use its own methods, except when required by the terms of the agreement involved (but see 9-107.8).

(e) The Departments normally will use their own funds when procuring supplies or services for NASA, or performing services, and will not cite NASA funds on any Defense obligation or payment document.

5-1002 NASA Purchase Request and Acceptance.

(a) The NASA-Defense Purchase Request (NASA Form Number 523) will be used by NASA for requesting procurement of supplies or services, from all activities of the Departments.

(b) Except as provided in (d) below, within 30 days after receipt of a NASA-Defense Purchase Request, the Department concerned will forward to the initiator of the request a DD Acceptance of MIPR Form, DD Form 448-2, in quadruplicate in accordance with instructions contained in 5-1109. Each DD Form 448-2 will show the action being taken or to be taken to fill the requirement and the name and complete address of the Department of Defense procurement activity for future direct contact by the initiator.

(c) To the extent feasible, all documents including acceptances, contracts, correspondence, shipping documents, work or project orders, and Standard Form 1080 (Voucher for Transfer Between Appropriations and/or Funds) billings will reference the NASA-Defense Purchase Request number and the item number when appropriate.

(d) Acceptance by the Department is not required for NASA-Defense Purchase Requests covering deliveries of common-use standard stock items which the supplying department has on hand or on order for prompt delivery at published prices.

5-1003 Changes in Estimated Total Prices. When a Department determines that the estimated total price (Block 9 NASA Form 523) of the items to be procured for NASA is not sufficient to cover the required reimbursement, or is in excess of the amount required, a request for an amendment will be forwarded to the NASA originating office. The request will indicate a specific dollar amount, rather than a percentage, and will include justification for any upward adjustment requested. Upon approval of the request, an amendment to the NASA-Defense Purchase Request will be forwarded to the procuring activity.

5-1004 Inquiries. Inquiries and correspondence will be directed to the NASA originating office.

5-1005 Payments. Payments to the Departments for supplies and services furnished or procured for NASA will be effected on the basis of Standard Form 1080 billings submitted to the NASA office designated in Block 11 of the NASA-Defense Purchase Request, except where agreements provide that reimbursement is not required. Billings will be supported in the same manner as billings between Departments.

Part 11—Coordinated Procurement

5-1100 Applicability. Although the Department of Defense Coordinated Procurement Program includes items assigned to one or more of the Departments or the General Services Administration for integrated materiel management, the procedures set forth in this Part apply to items assigned for purchase responsibility only, and not to those in the integrated materiel management program. The latter items will be obtained in accordance with current supply procedures.

5-1101 Definitions. As used in this Part, the following terms have the meanings set forth below.

5-1101.1 *Coordinated Procurement* refers to (i) the procurement by procurement activities, within the 48 contiguous States and the District of Columbia, of certain supplies to satisfy the requirements (including overseas requirements) of all Departments in compliance with assignment responsibilities set forth in Part 12; (ii) procurement assignments made by the respective Unified Commanders in Alaska, Hawaii, and outside the United States, regardless of funds utilized; and (iii) procurement assignments made in accordance with 5-1118. It does not include procurements made in Alaska, Hawaii, or outside the United States which do not fall within (i) or (ii) above.

5-1101.2 *Reserved.*

5-1101.3 *Requiring Department* refers to the Department originating a requisition or purchase request for supplies.

5-1101.4 *Procuring Department* refers to the Department or the General Services Administration whichever is assigned the procurement responsibility for the supplies.

5-1101.5 *Purchase Request* refers to the following types of authorized purchase requisitions:

(i) Military Interdepartmental Purchase Request (MIPR) (DD Form 448); and
(ii) Requisition for Coal, Coke, and Briquettes (DD Form 416).

5-1101.6 *Acceptance of MIPR* refers to DD Form 448-2 (Acceptance of MIPR) (see 16-602) executed by a Procuring Department as notice to the Requiring Department that a MIPR has been received and accepted for procurement action.

5-1101.7 *Reimbursable Procurement* (*Category I Method of Funding*) refers to the procurement of supplies for a Requiring Department on a contract funded by the Procuring Department, without separate identification of the items or separate citation of funds of the Requiring Department, with subsequent delivery to and reimbursement by the Requiring Department.

5-1101.8 *Direct Citation Procurement* (*Category II Method of Funding*) refers to a procurement having separate identification of the items and citing the funds of the Requiring Department, and may be accomplished by combining the requirements of two or more Departments under one contract with separate schedules showing the quantities, prices, dollar amounts, and citation of funds of each Requiring Department, or by placing separate contracts for each department.

5-1101.9 *Reserved.*

5-1101.10 *Military Service Managed Items* refers to items which are within Federal Supply Classes assigned to the Defense Supply Agency or the General Services Administration but which are retained for supply management by the Requiring Department.

5-1101.11 *Integrated Materiel Management Items* refers to items assigned to one Department or the General Services Administration for entire Department of Defense management. Such management normally includes responsibility for computation of requirements, funding, budgeting, storing, issuing, cataloging, standardizing and procuring functions.

5-1102 Responsibilities Under Coordinated Procurement. The Procuring Department is generally responsible for the following under coordinated procurement:

(i) operational phases of procurement planning (phasing the submission of requirements, consolidating or dividing requirements, analyzing the market, and determining patterns for the phased placement of orders in such a manner as to assure meeting the needs of the Requiring Departments at the lowest possible price to the Government, and at the same time avoiding unnecessary peaks and valleys of production);

(ii) purchasing;

(iii) performing or arranging through a contract administration office for contract administration, including followup and expediting of inspection and transportation; and

(iv) acquisition of licenses under patents or other proprietary rights covering the subject matter of the procurement and the settlement of patent infringement claims arising out of the procurement; approval of the Departments whose funds are to be charged for acquisition of licenses or settlement of claims shall be obtained.

5-1103 General Principles Governing Implementation of Procurement Assignments.

5-1103.1 *Standard Format-Development and Promulgation of Implementing Procedures.* Implementation of procurement assignments shall be in accordance with Enclosure 1 of Department of Defense Instruction 4115.1, dated October 14, 1968 (and amendments thereof), Subject: Department of Defense Coordinated Procurement Program—Purchase Assignments (NAVSUPINST 4215.4B).

5-1103.2 *Relationship Between Research and Development and Coordinated Procurement.* Items are not subject to procurement assignment until they have reached the production stage.

5-1103.3 *Small Dollar Value Purchases.* Requirement of small dollar value shall be procured in accordance with the provisions of the approved implementing procedures covering the particular assignment. Such implementing procedures shall normally provide a small dollar limitation of $2,500; however, in special situations, the limit may vary depending upon the commodity area and may be expressed either in a higher or lower dollar value, by tonnage, less-than-carload lot quantities, or other units, as appropriate. Such implementing procedures shall clearly state that requirements of a value or quantity less than the prescribed limitations shall, wherever feasible, be procured by the Requiring Department. A MIPR for nonmilitary type items of a value or quantity less than the prescribed limitations shall contain a notation that procurement by the Requiring Department was not considered to be feasible. A MIPR for a military type item need not contain such a notation. The Procuring Department shall not return a MIPR submitted in accordance with the foregoing, but shall procure such items.

5-1103.4 *Emergency*. In case of emergency, when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated procurement, purchases may be made without the prior authorization of the Procuring Department. When an emergency purchase is made, one copy of the contractual instrument, bearing or accompanied by a statement of the emergency, shall be transmitted promptly to the purchasing activity of the Procuring Department (the coordinated procurement assignee). The provisions of this paragraph will not normally be used for stock replenishment. These emergency procedures do not apply to the purchase of integrated materiel management items as described by 5-1101.11. Emergency purchase of such items is covered by 5-1201.2(d).

5-1103.5 *Department of Defense Manufacturing Establishment*. When procurement assignments have been made for items required by manufacturing establishments of the Departments, these items shall be obtained through the facilities of the Procuring Department unless such action will unduly hinder or delay production. When procurements are made other than through the Procuring Department, one copy of the contractual instrument bearing or accompanied by a statement of the circumstances necessitating such procurement shall be transmitted promptly to the purchasing activity of the Procuring Department. This paragraph is not applicable when purchases are made pursuant to 5-1103.3 above.

5-1103.6 *Consolidation of Requirements*. The primary object of coordinated procurement is to obtain for the Government maximum economy through the consolidation of requirements and the elimination thereby of competitive purchases among the Departments. The Procuring Department shall, to the extent consistent with the delivery schedule of the Requiring Department, consolidate in one contract its own requirements for the same or similar items plus all requirements received via MIPRs or other purchase requests.

5-1104 Items in Short Supply. When shortages develop in the market for supplies being purchased and requirements have been submitted by more than one Department, the normal procedure shall be to resolve the problem on a Departmental level between or among the Departments based on priorities for the supplies. If agreement cannot be reached, the subject shall be referred to the Assistant Secretary of Defense (Installations and Logistics) for decision.

5-1105 Transfer of Uncompleted Contracts.

5-1105.1 *Effect of Assignment of Procurement Responsibility*. As a general rule, when the procurement responsibility for a commodity or class of commodities is assigned to one Department, or the General Services Administration, uncompleted contracts of any other Department, or the General Services Administration, for any commodity or class of commodities will not be transferred but will continue to be administered by the Procuring Department or Defense Contract Administration Services as appropriate.

5-1105.2 *Contracting Officers Under Transferred Contracts.* In the case of any contract transferred, or to be transferred, to any Department, the successor to the contracting officer for each such contract shall be the Head of the Procuring Activity (or any contracting officer thereof) to which the administration of any such contract is assigned, and any such successor shall have all of the rights and responsibilities of a contracting officer under such transferred contract.

5-1106 Purchase Authorization.

5-1106.1 *MIPRs or Other Authorized Purchase Requests.*

(a) Military Interdepartmental Purchase Requests (MIPRs) or other authorized purchase requests when received by the Procuring Department shall be the authority to procure the supplies or nonpersonal services in accordance with single department procurement assignments or agreements between the Departments concerned as provided in 5-1118. The Procuring Department is authorized to create obligations against the funds cited in a MIPR without further referral to the Requiring Department. The Procuring Department has no responsibility to determine the validity of a stated requirement in an approved MIPR; however, it should bring apparent errors in the requirement to the attention of the Requiring Department.

(b) When purchase requests other than MIPRs (see 5-1101.5) are used as the basis for procurement, the general procedures prescribed for processing, amending, accepting and terminating requirements on MIPRs as prescribed in 5-1108, 5-1109 and in other paragraphs of this Part shall normally be followed, except as otherwise agreed to by the Departments involved.

5-1106.2 *Use of Advance MIPRs.*

(a) An Advance MIPR is an unfunded MIPR provided to the procuring activity in advance of the formal funded MIPR whereby initial steps in planning procurement action can begin at an earlier date.

(b) Advance MIPRs may be used only when the Procuring Department and the Requiring Department agree that the procedure may be beneficial in placing the procurement and obtaining the requirements in a more timely manner.

(c) Advance MIPRs shall not be released to a procuring activity until proper approval of the requirement is obtained.

(d) When Advance MIPRs are used, the DD 448 shall be prominently marked "Advance MIPR."

(e) For urgent requirements, the Advance MIPR may be in the form of an electrically transmitted message.

(f) On the basis of an Advance MIPR, the Procuring Department may take the initial steps toward establishing a contract, such as obtaining internal coordination, preparing a procurement plan, and making a Determinations and Findings. The extent of such action may be determined by the procuring Departments. However, contracts shall not be awarded on the basis of advance MIPRs.

5-1106.3 *Determinations and Findings.*

(a) *General.*

(1) When coordinated procurement is by negotiation, the Procuring Department, except as provided in (2) below, shall make the determinations and

findings in accordance with Section III, Part 3. The Requiring Department shall furnish with the purchase request the information required by the Procuring Department to develop the determinations and findings.

(2) When coordinated procurement is negotiated pursuant to 10 U.S.C. 2304(a)(13) and 3–213, the Requiring Department shall make the determinations and findings in accordance with Section III, Part 3. When the Requiring Department is responsible for securing Secretarial approval under 10 U.S.C. 2304(a)(16) and 3–216, the MIPR shall contain a statement that the required determinations and findings has been executed for the specific case in question or program involved. In both instances the Requiring Department shall preserve the original determinations and findings with supporting data as required by 3–308, except that two copies shall be attached to the MIPR or purchase request in the Procuring Department's contract file.

(b) *Foreign End Products*. Where a foreign end product is specified by the Requiring Department, that Department is responsible for determining that a domestic source end product is not available as required by 6–102.3(b) or 6–805.2(a)(v).

Two copies of the determination that a domestic source end product is not available shall be furnished to the Procuring Department with the MIPR.

5–1106.4 *Delivery Schedules*.

(a) In submitting MIPRs the Requiring Department should take into consideration the normal administrative lead time of the particular commodity in order to insure delivery by the date required. The time of delivery or performance is an essential element for inclusion in a contract and must be clearly stated in each MIPR. Delivery and performance schedules on MIPRs shall be designed to meet the requirements of the particular procurement and must be realistic (see 1–305). If the delivery schedule as set forth in a MIPR is unrealistic or cannot be accepted by the Procuring Department, the DD Form 448–2 "Acceptance of MIPR" will be so annotated (see 5–1109.3). Changes in the requested delivery schedule shall be accomplished in accordance with 5–1108.5.

(b) When a short delivery schedule is mandatory, the MIPR shall be marked "URGENT" in bold letters. The Requiring Department's justification for the "URGENT" marking shall be stated on the MIPR or attached thereto, in order to enable the Procuring Department to apply any necessary expediting techniques to assure the required delivery (see 3–801.3).

5–1106.5 *Specifications, Drawings, and Other Purchase Data*. The Requiring Department shall furnish to the Procuring Department a list (or copies) of specifications, drawings, and other data, as appropriate, required for the procurement. If Federal, Military, Departmental, or other specifications, or drawings or data are available to the Procuring Department and referenced in the MIPR, they need not be furnished by the Requiring Department. Under no circumstances shall the Procuring Department direct or authorize deviations or waivers from the specifications, drawings, or other purchase data included in the MIPR without express authority of the Requiring Department (but see 14–406 (b)). Required changes in such purchase data shall be accomplished as set forth in 5–1108.5.

5–1106.6 *Utilization of Existing Department of Defense Assets*. The Requiring Department is responsible for insuring compliance with 1–302.1 prior to submitting military interdepartmental purchase requests for procurement action.

5-1106.7 *Options for Increased Quantities.* If the Requiring Department desires an option to purchase an additional quantity, the MIPR shall so stipulate and shall contain a justification therefor.

5-1107 Funds and Payments.

5-1107.1 *Citation of Appropriation and Funds of Requiring Department—Category II Method of Funding.* Except as provided in 5-1107.2, contracts and orders for other than integrated supply management materiel shall cite the specific fund citation(s) and the MIPR number of the Requiring Department. The Procuring Department shall determine which type of funding (direct citation or reimbursable procurements) shall be used.

5-1107.2 *Citation of Funds of Procuring Department—Category I Method of Funding.* Under the conditions listed below, only the funds of the Procuring Department shall be cited in the consolidated contracts; and the contracts and orders thereunder shall provide for payment by the Procuring Department or by the Defense Contract Administration Services as appropriate:

(i) delivery is from existing inventories of the Procuring Department;

(ii) delivery is by diversion from existing contracts of the Procuring Department which cite the funds of the Procuring Department;

(iii) production or assembly is through Government work orders in Government-owned plants;

(iv) allocation of production quantities among users from one or more contracts for which the identity of specific quantities of the end item to individual contracts is not feasible at the time of MIPR acceptance;

(v) procurement of the end items involves separate procurement of components to be assembled by the Procuring Department;

(vi) payments will be made without reference to deliveries of end items; *e.g.*, cost-reimbursement type contracts and fixed-price contracts with progress payment clauses; or

(vii) it is not feasible and economical to use Category II method of funding.

5-1107.3 *Disbursement.* When the contract is funded with DoD funds and is to be administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the Defense Contract Administration Services Region Disbursing Office (see 20-706(a)). If the contract is not administered by the Defense Contract Administration Services, the Procuring Department shall cite as the disbursement office the payment office designated by the Requiring Department (see 5-1108.1(e)).

5-1107.4 *Authorization for Exceeding MIPR Estimates.* Each MIPR shall indicate on its face whether or not the total MIPR estimate may be exceeded by the purchasing office, and if affirmative, by what amount. The additional amount shall not be more than $20,000, or 10% of the total estimated MIPR amount, whichever is less.

5-1108 Preparation and Use of DD Form 448 (MIPR). DD Form 448 is sustantially self-explanatory. Information provided in MIPRs shall be arranged in Uniform Contract Format (see 2-200 and 3-500) to the extent feasible. If desired, each Department may overprint fixed repetitive information.

5-1108.1 *Special Instructions.*

(a) *MIPR Number.* The MIPR number will consist of:

- (i) the requiring agency identification code as prescribed in the DoD Activity Address Directory (DODAAD), DoD 4000.25D;
- (ii) the last digit of the fiscal year; and
- (iii) the number of the particular MIPR (numbered consecutively by the requiring activity).

Amendments will be numbered with the MIPR number suffixed with the amendment number assigned in consecutive numbered sequence.

(b) Appropriate checks in Item 9 shall be accomplished in compliance with Department of Defense policy which requires interdepartmental screening of items in accordance with 1-302.1 to determine stock availability within other Departments prior to preparation of a DD Form 448. Items which are determined to be available from stocks of other Departments shall be requisitioned as follows:

- (i) items within the scope of MILSTRIP (see DoD 4140.17-M (MILSTRIP) of 1 May 1964, as amended) shall be obtained by use of DD Form 1348/ 1348m, DoD Single Line Item Requisition System Document;
- (ii) items not covered by MILSTRIP shall be obtained by use of DD Form 1149, Requisition and Invoice/Shipping Document.

If a Procuring Department determines after receipt of a MIPR that the items can be supplied from stock, the MIPR shall be used for effecting supply from such stock.

(c) Normally a MIPR shall be restricted to one major end item, including its required spare parts, ground support equipment, and similar related items. MIPRs for other than major end items normally shall be limited to items within a single Federal Supply Classification.

(d) Attachments to MIPRs (Item 10) must be prepared in sufficient numbers so that each copy of a MIPR submitted to the Procuring Department is complete with a copy of all attachments. *Ship To and Mark For* addresses in shipping instructions shall include the clear text identification and DoDAAD code if assigned.

(e) Item 13 is used to identify the name and address of the office to receive invoices and make payment only if the resulting contract is not to be paid by the Defense Contract Administration Services in accordance with 5-1107.3, and the office to receive invoices and make payment is known at the time of preparation of the MIPR. If payment is to be made by an office designated to receive invoices, also enter the DoDAAD code of that office. If payment is to be made by an office other than the office to which the invoice is to be mailed (Item 13), the name, address, and DoDAAD code of the payment office shall be set forth in detail as an attachment to the MIPR. If multiple offices are to receive invoices and make payment, the names and addresses of those offices shall be set forth as an attachment to the MIPR, including the DoDAAD code of each payment office. Whenever the payment office(s) is included in an attachment, an appropriate reference to the attachment will be included in Item 13. If the names and addresses of those offices are to be provided to the Procuring Department after preparation of the MIPR, the DoDAAD code also shall be provided for each payment office.

(f) Allotment data for the procurement of supplies shall be entered in Item 14. Allotment data for the transportation of supplies at Government expense, if cited in the MIPR in accordance with 5-1117, shall be entered in Item 12. Each citation in Item 14 shall be set forth in the appropriate space in the following manner:

(i) *ACRN*. If the Accounting Classification Reference Number procedures of 20-308 are used in the MIPR to relate allotment data to the MIPR item or delivery, the ACRN for each fund citation in Item 14 shall be entered. (The Procuring Department is not required to use in the resulting contract the ACRN assigned to a fund citation in the MIPR.)

(ii) *Appropriation*. Will be shown in the ten positions as follows:

(A) First and second positions shall be the Treasury Department number identifying the Department or Agency to which the appropriation applies or has been transferred.

(B) Third and fourth positions shall be the Treasury Department number identifying the Department or Agency from which an appropriation has been transferred; shall be blank if no transfer is involved.

(C) Fifth and sixth positions shall identify the Appropriation Fiscal Year. For multiple-year appropriations, the fifth position shall be the last digit of the first year of availability and the sixth position shall be the last digit of the final year of availability. For annual appropriations, the fifth position shall be blank and the sixth position shall be the last digit of the Fiscal Year. For no-year (continuing) appropriations, the fifth position shall be blank and the sixth position shall be the "X".

(D) Seventh through tenth positions shall be the Treasury Department appropriation serial number.

(iii) *Limit/Subhead*. Up to four characters; if less than four characters, leave empty spaces blank.

(iv) *Supplemental Accounting Classification Data*. Shall not exceed 36 characters. Enter in accordance with Departmental or Agency regulations.

(v) *Accounting Station*. Shall show the six character DoDAAD code of the accounting station (not used with Navy and Marine Corps funds).

(vi) *Amount*. Enter the amount for each fund citation if more than one allotment is cited.

(vii) *Additional Citations*. If space is required for additional fund citations, they shall be set forth in the same manner as an attachment to the MIPR and a reference to the attachment will be included on the form.

(g) Requiring Activities shall provide MILSTRIP requisition data prescribed in Appendix B of the MILSTRIP Manual, for each line item which is to be delivered to each "ship to" address. Repetitive data applicable to all lines on the MIPR may be overprinted.

(h) The Requiring Activity will furnish estimated weight, cube and dimensions for each line item or a statement that such data are not available and the reasons therefor.

5-1108.2 *Cutoff Dates for Submission of Cateogry II (direct citation) MIPRs.*

(a) Unless otherwise agreed between the Departments, a cutoff date of 31 May of each year is established for the receipt of MIPRs citing expiring appropriations which must be obligated by 30 September of that fiscal year. If circumstances arise which require the submission of MIPRs citing expiring appropriations after the cutoff date, the Requiring Department will communicate with the Procuring Department prior to submission to ascertain whether or not it will be possible for the Procuring Department to execute a contract or otherwise obligate the funds by the end of the fiscal year. Procuring Departments will make every effort to obligate funds for all such MIPRs accepted after the cutoff date. However, acceptance of a late MIPR does not constitute assurance by the Procuring Department that all such funds will be obligated. The provisions of these instructions are not to be construed as restrictive in the processing of MIPRs when it is within the capabilities of the Procuring Department to execute contracts or otherwise obligate the funds prior to the end of the fiscal year.

(b) MIPRs citing continuing appropriations are not restricted by law to time limits for obligation; therefore, the cutoff date of 31 May is not applicable to such MIPRs and procurement action should continue regardless of whether obligation will be accomplished before or after the end of the fiscal year. However, as the timely accomplishment of obligations is a factor affecting delivery of material, every effort must be made by the Procuring Department to obligate available funds as soon after receipt of the MIPR as is possible.

5-1108.3 *Notification of Inability To Obligate.* On 1 August of each fiscal year, the Procuring Department will advise the Requiring Department of any Category II (direct citation) MIPRs on hand citing expiring appropriations on which they will be unable to obligate the funds prior to the fund expiration date. If an unforeseen situation develops after 1 August which will prevent execution of a contract, the Procuring Department will notify the Requiring Department of that fact by the most expeditious means and return the MIPR accompanied by a letter of transmittal authorizing purchase by the Requiring Department including the reason that procurement could not be accomplished.

5-1108.4 *Number of Copies of MIPRs With Attachments To Be Submitted.* Unless otherwise agreed by the Departments, the original and six copies of each MIPR, all complete with attachments, shall be forwarded to the Procuring Department. When copies of specifications, drawings or other data are to be furnished with MIPRs (see 5-1106.5), the number of copies of such data to be furnished shall be as agreed upon by the Requiring and Procuring Departments.

5-1108.5 *Changes to MIPRs.*

(a) Normally, changes that affect the contents of the MIPR must be processed as a MIPR amendment regardless of the status of the MIPR. However, a MIPR amendment for increased quantities of items specified in the original MIPR may be used when it is known that the original MIPR requirements have not been released for solicitation but then only after coordination and agreement with the Procuring Department. Changes may be initially provided by expeditious means such as telegraphic message but shall be confirmed by a MIPR amendment. Requirements for additional line items of supplies or services not provided for in the original MIPR shall be submitted as a new MIPR.

(b) Only those items of the DD Form 448 that are applicable to the change, revision, etc., being written, which vary or deviate from the data shown on the basic MIPR or prior amendment thereto will be filled out. All other items will have "n/c" inserted to reflect no change. However, basic information in items 1 through 8 must always be shown.

(c) A MIPR amendment is not required for change of a disbursing office set forth on a DoD funded MIPR when the resultant contract is assigned for contract administration to a Defense Contract Administration Services Region. Such change may be made by the DCASR by issuance of an administrative change order, copies of which will be provided to the PCO for transmittal to the requiring activity.

5-1108.6 *Requests for Additional Funds.* When the Procuring Department requires additional funds to complete procurement actions for the Requiring Department, the request for additional funds must identify the exact items involved and the reason why additional funds are required. The Requiring Department shall take expeditious action to provide such funds by an amendment to the MIPR or to reduce requirements accordingly. In case of any anticipated delay in furnishing required additional funds, the Procuring Department will be advised accordingly.

5-1109 Acceptance of MIPR. As soon as practicable, but not later than 30 days after receipt of a MIPR, the Procuring Department shall formally accept the MIPR by DD Form 448-2, "Acceptance of MIPR." If this time limit cannot be met, the Requiring Department shall be informed of the reason for the delay and the anticipated date the MIPR will be accepted. In any event, Category I MIPRs must be accepted in writing by the Procuring Department prior to the expiration of funds cited. When accepted for reimbursable procurement, the executed DD Form 448-2 is the authority for the Requiring Department to record the obligation of funds. When accepted for direct citation procurement, the accomplished DD Form 448-2 is notification that copies of contracts will be furnished at a later date and a conformed copy of the contract will be the authority to record the obligation. The accepting activity of the Procuring Department shall remain responsible for the MIPR even though that activity may split the MIPR into segments for actions among other procurement activities.

5-1109.1 *Qualified Acceptance.* Where contingencies, price revisions or variations in quantities are anticipated by the Procuring Department under reimbursable procurement, the acceptance will be so annotated on DD Form 448-2. When the acceptance is qualified, the Procuring Department will periodically advise the Requiring Department prior to submission of billings, of any changes in the acceptance figure so that an amendment to the MIPR may be issued by the Requiring Department and the appropriate adjustment may be made to the recorded obligation to reflect the current price.

5-1109.2 *Non-Qualified Acceptance.* If the acceptance of a MIPR is not qualified by the Procuring Department for anticipated contingencies under reimbursable procurement, the price on the acceptance will be final and will be billed at time of delivery.

5-1109.3 *Preparation and Use of DD Form 448-2 (Acceptance of MIPR).*

(a) DD Form 448-2 is substantially self-explanatory, however, certain details are defined below. Only pertinent items should be accomplished.

BEST DOCUMENT AVAILABLE

(1) Check the specific terms in Item 6 under which the MIPR is being accepted. (See 5-1107.)

(2) If any one of the MIPR line items is not accepted, Item 7 will be checked and the affected MIPR line item number and reason recorded in Item 13.

(3) Items 8 and 9 will be used only:

(i) When Item 6c acceptance is indicated, identify the MIPR line item numbers that will be provided under each method of financing in Items 8a and 9a respectively; or

(ii) If quantities or estimated costs cited in a MIPR require adjustment, the affected MIPR line item numbers will be listed together with the adjusted quantities or estimated costs in the columns provided under Items 8 and 9 as may be appropriate.

(4) Whenever a MIPR is accepted in part or in total under Category II (direct citation) method of financing, the Procuring Department will forecast in Item 10 the approximate date that contractual placement is expected to be accomplished.

(5) Enter the total amount of funds in Item 11 required by the Procuring Department to fund the MIPR items, as accepted.

(6) Complete Item 12 only in those cases where the amount recorded in Item 11 is not in agreement with the amount recorded in Item 5. This will serve either as (i) request on the Requiring Department to issue a MIPR amendment to provide the additional funds required, or (ii) authority for the Requiring Department to withdraw the available excess funds. When funds of two or more appropriations are involved, proper breakdown information will be provided in Item 13.

(7) Item 13 will be used to record (i) justification, by MIPR line item, for any additional funds required; (ii) explanation for rejection of MIPR whether in part or in total, (iii) appropriation and subhead data cited on the MIPR; and (iv) such other data as may be pertinent.

(b) DD Form 448-2 shall be executed for all MIPR amendments involving an adjustment of funds or delivery schedule, and in all other cases only when requested by the Requiring Department.

(c) The Requiring Department will be furnished four copies (one signed) of each accomplished DD Form 448-2 unless otherwise agreed between the Departments.

5-1109.4 *Withdrawal of Funds.*

(a) When the Procuring Department accepts a MIPR for reimbursable procurement in a lesser amount than authorized on the MIPR, the DD Form 448-2 is the authorization for the Requiring Department to withdraw such excess funds by MIPR amendment. Upon receipt of the final billing (SF 1080) and a subsequent determination that all items requested on the MIPR have been delivered and billed in an amount less than the MIPR, the Requiring Department may adjust their fiscal records accordingly without authorization from or notice to the Procuring Department.

(b) When the Procuring Department has accepted a MIPR for direct citation procurement, and initial contract placement is completed, any unused funds remaining on the MIPR become excess and are no longer authorized for use of the Procuring Department. Any such excess funds will be immediately reported to the Requiring Department. Although the Procuring Department is prohibited from further use of such excess funds, the Requiring Department will confirm the withdrawal of excess funds by the issuance of a MIPR amendment.

5-1110 Components of End Items.

5-1110.1 *Contractor-Furnished Components*. In the procurement of end items where the contractor normally secures all components thereof from his own source (not Government-furnished), the procurement assignment does not apply to the component items required by such contractor.

5-1110.2 *Government-Furnished Components*. In the procurement of end items where the Government furnishes components which are covered by a procurement assignment, such components shall be procured in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with 5-1201.

5-1110.3 *Purchase of Components Over and Above Those Initially Purchased With the End Item*. The procurement of components covered by a procurement assignment, over and above those initially purchased with the end item, shall be effected in accordance with the procurement assignment. However, direct purchase may be made by a Requiring Department in exceptional cases where agreement is reached with the Procuring Department or is authorized in accordance with 5-1201.

5-1111 Distribution of Contracts and Orders. (See 20-401(d)(ii)(D).

5-1112 Cancellation of Requirements.

(a) *Direct Citation Procurement*. When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall so notify the Procuring Department by telegraphic notice. In the event that the Procuring Department has not entered into a contract for the supplies and services to be canceled, the Requiring Department shall be immediately notified to that effect. Upon receipt of such notification, the Requiring Department shall initiate a MIPR amendment to revoke the estimated amount shown on the original MIPR for the canceled items.

(1) In the event that the items to be canceled have already been placed under contract, the following procedures will apply. As soon as practicable but in any event within 45 days after receipt of the notice of cancellation from the Requiring Department, the Procuring Contracting Officer shall issue a Termination Data Letter to the Requiring Department (original and 4 copies) which will contain as a minimum the information set forth below.

SUBJECT: Termination Data Re:
Contract No...
Termination No...
Contractor ....
TO:

1. As termination action is now in progress on the above contract, the following information is submitted:

(a) Brief Description of Items terminated

(b) You are notified that the sum of $........... is available for release under the subject contract which sum represents the difference between $..........., the value of items terminated under subject contract, and $............ estimated to be required for settlement of the terminated contract. The estimated amount available for release is allocated by the appropriations cited on the contract as follows:

MIPR NO. — ACCOUNTING CLASSIFICATION — AMOUNT

Total available for release at this time $............

2. You are requested to forward an amendment to MIPR .... on DD Form 448 to reflect the reduced quantity and amount of funds available for release.

3. Periodic examinations (not less than 60 days) will be made as termination proceedings progress to redetermine the Government's probable obligation.

........................(*Signature of*
Procuring Contracting Officer)

(2) Periodic examinations of the termination proceedings will be accomplished no less often than every 60 days by the termination contracting officer to reassess the Government's probable obligation. If any additional funds are excess to the probable settlement requirements, or if it appears that previous release of excess funds will result in a shortage of the amount which will be required to consummate settlement, prompt action will be taken to notify the purchasing office, which will amend the Termination Data Letter accordingly. A MIPR amendment to reflect the reinstatement of funds shall be processed by the Requiring Department within 30 days after the amended Termination Data Letter requesting reinstatement of funds has been received from the purchasing office.

(3) If required, an amendment to the MIPR covering final removal of any remaining excess funds with respect to terminated quantities shall be prepared by the Requiring Department upon receipt of its copy of the Termination Settlement Agreement.

(b) *Reimbursable Procurement*. When all or any part of the supplies or services requested in the MIPR are to be canceled by the Requiring Department, that Department shall notify the Procuring Department by telegraphic notice. Within 30 days, the Procuring Department shall notify the Requiring Department as to the quantity of items available for termination and the amount of funds in excess of the estimated settlement costs. Upon receipt of this information, the Requiring Department shall issue a MIPR amendment to reduce the quantities and funds accordingly.

(c) *Termination by Default*. When the Procuring Department exercises authority to terminate for default (Section VIII, Part 6), that Department will query the Requiring Department as to whether the supplies or services to be terminated are still required so that repurchase action as specified in 8–602.6 can be undertaken.

(1) The Requiring Department will not deobligate funds on a contract terminated for default until such time as a contractual supplemental agreement of settlement or other written evidence from the Procuring Department as to release of funds is received.

(2) On the repurchase action, the Procuring Department will not exceed the unliquidated funds on the defaulted contract without the provisions of additional funds by the Requiring Department.

5–1113 Administrative Costs. The Procuring Department shall bear, without reimbursement therefor, the administrative costs incidental to its procurement of supplies for another Department. However, when a procurement responsibility is transferred from one Department to another Department, funds appropriated or to be appropriated for defraying the administrative costs of such procurement responsibility shall be made available to the successor Procuring Department which shall assume budget cognizance at the earliest possible date.

5-1114 Inspection. Policies and procedures concerning inspection and acceptance for use in conjunction with this Part are set forth in Section XIV of this Regulation.

5-1115 Execution of Contracts. Generally, the Procuring Department shall execute a single contract where an award embodying the requirements of more than one Department is made to a single contractor.

5-1116 Status Reporting.

(a) The Procuring Department shall maintain an appropriate system of MIPR followup so that the Requiring Department may be informed of the current status of their requests. In addition, an appropriate system of followup shall be maintained by the contract administration office so that the Procuring Department may be currently informed as to contractor performance and in turn to insure that the Requiring Department is apprised of the status of contracts resulting from MIPRs.

(b) If requested by the Requiring Department, the Procuring Department will furnish the Requiring Department a copy of the solicitation document for materiel management status information when the request is satisfied through the use of direct citation of funds (Category II Method of Funding).

(c) Any reimbursement billings, shipping documents, contractual documents, project orders or related documentation furnished to the Requiring Department will identify the Requiring Department's MIPR number, quantities of items, and funds covered thereby.

5-1117 Transportation of Supplies. The Requiring Department is responsible for advising the Procuring Department or the Transportation Officer in the Contract Administration Office, as appropriate, the appropriate fund account chargeable for transportation costs in effecting delivery of supplies at Government expense. The Requiring Department shall accomplish this by (i) either citing the fund account on each MIPR, or (ii) providing the appropriate fund account to the Transportation Officer of the office administering the contract, at the commencement of each fiscal year, for citation on Government bill of lading. In every instance, the Government bill of lading, which is generally issued by the Transportation Officer in the responsible Contract Administration Office, shall show (i) the Requiring Department as the Department to be billed, and (ii) the appropriate fund account designated by that Department.

5-1118 Procurement Agreements.

(a) This paragraph 5-1118 establishes policy as authorized in 10 U.S.C. 2308 with regard to agreements between the Departments or other agencies for procurement of commodities or services not assigned in accordance with Section V, Part 12.

(b) 10 U.S.C. 2308 provides that Department Heads by agreement may make assignments and delegations of procurement responsibilities from one Department to another or may create joint or combined offices to exercise procurement functions and responsibilities.

(c) Agreements may be made on either a one-time basis or a continuing basis. The submission of a MIPR by a requiring activity and its acceptance by the purchasing activity of another Department, even though based on oral communication, shall establish a onetime agreement. Delegated procurement responsibilities of a continuing nature shall be considered for coordinated procurement assignment. However, all agreements of a continuing nature shall be formalized, implemented, and distributed among the activities concerned even though not considered suitable for coordinated procurement assignment.

Part 12—Commodity Assignments

5-1201 Assignment Authority. The commodity assignments set forth below have been made by the Assistant Secretary of Defense (Installations and Logistics) to the Military Departments. Also included are assignments to the General Services Administration made by the Assistant Secretary of Defense (Installations and Logistics) in accordance with DoD/GSA agreements. The letter "P" appearing after an FSC Code indicates a partial FSC assignment. There may be specific items within any of the assignments which have been designated for DoD Integrated Materiel Management to other than the coordinated procurement assignee. Such items will be purchased by the DoD Integrated Materiel Manager.

5-1201.1 *Exclusions—Military Department Assignments (Except DSA).* General exclusions to applicability of commodity assignments made to a Military Department (except Defense Supply Agency) are:

(i) emergency procurements, as determined by the Requiring Department;

(ii) procurements not in excess of $2,500 per line item;

(iii) procurements of items authorized for local purchase, pursuant to mutual agreement between the assignee and the other users;

(iv) items in a research and development stage; and

(v) item subject to rapid design changes, or to continuous redesign or modification during the production or operational use phases which necessitate continual contact between industry and technical personnel of the requiring service to insure that the item procured is exactly that which is required.

5-1201.2 *Exclusions—DSA and GSA Assignments.*

(a) *Optional Exclusions.* With respect to commodity assignments made to the Defense Supply Agency or the General Services Administration, the following categories of service-managed items within an assigned class may be purchased by the Departments of the Army, Navy, or Air Force at their option:

(i) Items in a research and development stage—This exception permits the Military Departments to contract for research and development requirements, including quantities for testing purposes and items undergoing in service evaluation (not yet in actual production, but beyond prototype). The term "research and development" as used * herein relates only to procurements described in Section IV, Part 1. Generally, this exception can be used only when the procurement is covered by research and development funds; and

(ii) items peculiar to Nuclear Ordnance Materiel, because of design characteristics or because of test-inspection requirements which are | controlled by the Energy Research and Development Administration or by the DoD to insure reliability of nuclear weapons.

  (A) This exception applies to all items designed for and peculiar to nuclear ordnance regardless of Agency control, or to any item which requires test or inspection conducted or controlled by the | ERDA or DoD. The Defense Nuclear Agency will have DoD procurement responsibility for all items assigned for integrated management in accordance with DoD Directive 5105.31.

(B) This exception does not cover items used for both nuclear ordnance and other purposes if such items are not subject to the special testing procedures.

(iii) items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(12) and 3–212, Classified Purchases (*i.e.*, purchases or contracts classified "Confidential" or higher, or where because of other considerations, a contract should not be publicly disclosed.);

(iv) items to be procured under the authority of a Determination and Findings issued pursuant to 10 U.S.C. 2304(a)(14) and 3–214, Technical or Specialized Supplies, requiring substantial initial investment or extended period of preparation for manufacture; and

(v) items which are directly related to a weapon/defense/space system and which are design-controlled by, and procured from either the system manufacturer or a manufacturer of a major subsystem thereof.

(A) This exception is intended to cover a specific and relatively small portion of "weapon/defense/space system" related items. An exempted item must meet two conditions. First, it must be directly related to the weapons system. Secondly, it must be both design controlled and procured from the system or major subsystem contractor.

(B) The exception is intended, for example, to permit a Service to contract for an item which it procures from an airframe manufacturer (as sole source), *provided* the airframe manufacturer is responsible for the design of the item. It would likewise pertain to a component of a Government furnished engine to be installed in the airframe, if the Service procures the component from the engine manufacturer and the engine manufacturer has design cognizance of the item.

(C) The exception is not intended to cover the broad category of weapons related items but only that portion which is both procured from and design controlled by the system or major subsystem contractor.

(vi) items subject to rapid design changes or to continuous redesign or modification during the production and/or operational use phases which necessitate continual contact between industry and technical personnel of the Requiring Department to insure that the item procured is exactly what is required.

(A) This exception permits the Military Departments to contract for items of highly unstable design. Its use must be predicated on a determination that it is clearly impractical, both from a technical and contracting viewpoint, to refer the procurement to DSA or GSA. Thus, the possibility of a number of design changes occurring during the course of the contract is not in itself sufficient evidence for retention of the procurement. Neither is the fact that a procurement would possibly qualify for placement as a negotiated contract. Conversely, a procurement for an item covered by a reasonably firm specification which can be placed under the formal advertised procedure is prima facie evidence that the use of the exception is not valid.

(B) This exception also applies to items requiring compatibility testing as a contract requirement, *provided* that such testing requires continual contact between industry and technical personnel of the Requiring Department.

(vii) containers procured only with items for which they are designed; and

(viii) emergency procurements, as determined by the Requiring Department:

(A) This exception permits the Services to make emergency procurements (valued at over $2,500) in the context of 5-1103.4 "when the exigencies of the situation will not permit the delay incident to following the normal channels of coordinated procurement."

(B) As a general rule, this exception should cover items only when they are readily available from commercial inventories or in current production. It should not be used with extended production lead time.

(C) Unless the item is immediately available from a commercial source, emergency procurements should be coordinated with the cognizant DSA Center or GSA Support Region by telephone or other rapid communication prior to proceeding with the local procurement. This will serve the interests of the Requiring Department for the following reasons:

(1) the need may be satisfied immediately by diversion from a current DSA or GSA contract;

(2) the Center or the GSA Support Region may arrange to satisfy the requirement from other Military Department stocks or DSA/GSA stocks recently delivered under a DSA or GSA contract; and

(3) the Center or GSA Support Region may be able to "add on" to an existing DSA or GSA contract and obtain the material faster than the Requiring Department could by a unilateral procurement.

(ix) Procurements of military service-managed or noncataloged items not in excess of $2,500 per line item—This exception permits the Military Departments to procure a line item which does not exceed a value of $2,500. It does not apply to a line item valued at $2,500 or under which is included in a Federal Supply Schedule mandatory for use by DoD activities; and

(x) noncatalog items in the nature of a onetime buy and not contemplated as an item in the supply system:

BEST DOCUMENT AVAILABLE

(A) This exception is intended to permit the Military Departments to contract for a nonrecurring requirement for a noncataloged item. "Not contemplated as an item in the supply system" as a practical matter means that the item is not in the supply system nor is such anticipated. This exception could cover a part or component for a prototype and such part or component may be stock numbered at a later date.

(B) This exception may not be used to cover purchases of recurring requirements for an item based solely on the fact that the item is not stock numbered nor may it be used to purchase items which have only slightly different characteristics from previously cataloged items.

(b) *Defense Supply Agency and General Services Administration Responsibility To Procure Excluded Items Upon Request.* Items other than nuclear ordnance materiel which may be purchased by the other Military Departments at their option under (a) above shall be procured by DSA or GSA at the requests of the Military Departments.

(c) *Exclusions to Defense Supply Agency or General Services Administration Assignments by Agreement.* The Military Departments shall process to the appropriate DSA Center or GSA Support Region for procurement those service-managed items which do not meet the exception criteria set forth in (a) above, unless by mutual agreement between the cognizant Military Service Inventory Manager and the DSA Center concerned, or the GSA Support Region, the item is determined to be most satisfactorily procured on a Military Service basis. The Military Departments shall insure that subsequent procurements of items previously classified as exceptions under (a) above do in fact continue to meet the exception criteria at the time of the subsequent procurement. Otherwise, such procurements shall be forwarded to DSA or GSA for purchase.

(d) *Exclusions for Local Purchase of Integrated Materiel Managed Items.* Requiring Departments may purchase at their option any DSA or GSA centrally managed, commercially available item *provided:*

(1) in the case of an emergency requirement, such as a work stoppage, the purchase action is limited to immediate-use quantity; or

(2) in the case of routine requirements, the total line item value does not exceed $10.00 and local purchase is determined to be the most economical method of supply.

When an emergency purchase is made, one copy of the contractual instrument shall be forwarded promptly to the appropriate DSA Center or the GSA, Federal Supply Service, Procurement Operations Division (FPNP), Washington, D.C. 20406. A copy of the sales slip, delivery ticket or receipt document (*e.g.*, Standard Form 1165) may be used to fulfill this requirement when purchase was accomplished by use of imprest funds or by call against a basic purchase agreement.

5-1201.3 *Department of the Army.*

Federal Supply Class Code	*Commodity*
FSC ("P" after the FSC number indicates a partial FSC assignment)	Electronic Equipment. Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listings for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).
1005 P *	Guns, through 30mm This partial FSC assignment applies to guns, through 30mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type guns; MK 11 and MK 12, 20mm gun; and aircraft gun mounts.
1010 P *	Guns, over 30mm, up to 75mm This partial FSC assignment applies to guns, over 30mm and up to 75mm, and parts and equipment therefor, as listed in Department of the Army Supply Manuals / Catalogs. It does not apply to naval ordnance type guns and aircraft gun mounts.
1015 P *	Guns, 75mm through 125mm This partial FSC assignment applies to This partial FSC assignment applies to guns, 75mm through 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type guns.
1020 P *	Guns over 125mm through 150mm
1025 P *	Guns over 150mm through 200mm
1030 P *	Guns over 200mm through 300mm 1035 P * Guns over 300mm These partial FSC assignments apply to guns, over 125mm, and parts and equipment therefor, as listed in Department of Army Supply Manuals / Catalogs. They do not apply to naval ordnance type guns.
1040	Chemical Weapons and Equipment
1055 P *	Launchers, Rocket and Pyrotechnic This partial FSC assignment applies to launchers, rocket and pyrotechnic, as listed in Department of Army Supply Manuals /Catalogs. It does not apply to naval ordnance type and airborne type, with the exception of 2.75 inch Rocket Launchers which are included in this partial FSC assignment to the Department of the Army.
1090 P	Assemblies Interchangeable Between Weapons in Two or More Classes This partial FSC assignment applies to the following items:

National Stock Number	*Nomenclature*
1090-563-7232	Staff Section, Class
1090-699-0633	Staff Section
1090-796-8760	Power Supply
1090-885-8451	Wrench Corrector
1090-986-9707	Reticle Assembly

1095 P *	Miscellaneous Weapons This partial FSC assignment applies to miscellaneous weapons, and parts and equipment therefor, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type; line throwing guns (which are under DoD Coordinated Procurement assignment to the Department of the Navy); and aircraft type miscellaneous weapons.

Federal Supply Class Code	*Commodity*
FSC ("P"	after the FSC number indicates a partial FSC assignment)
1210 P *	Fire Control Directors
1220 P *	Fire Control Computing Sights and Devices
1230 P *	Fire Control Systems, Complete
1240 P *	Optical Sighting and Ranging Equipment
1250 P *	Fire Control Stabilizing Mechanisms
1260 P *	Fire Control Designating and Indicating Equipment
1265 P *	Fire Control Transmitting and Receiving Equipment, Except Airborne
1285 P *	Fire Control Radar Equipment, Except Airborne
1290 P *	Miscellaneous Fire Control Equipment The above nine partial FSC assignments apply to fire control equipment, as listed in Department of the Army Supply Manuals / Catalogs. They do not apply to naval ordnance type and aircraft type.
1305 P *	Ammunition, through 30mm This partial FSC assignment applies to ammunition through 30mm as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type and ammunition for the MK 11 and MK 12, 20mm gun.
1310 P *	Ammunition, over 30mm up to 75mm. This partial FSC assignment applies to ammunition, over 30mm up to 75mm, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type and to 40mm ammunition (which is under DoD procurement assignment to the Navy.) The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1315 P *	Ammunition, 75mm through 125mm. This partial FSC assignment applies to ammunition, 75mm through 125mm, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1320 P *	Ammunition, over 125mm. This partial FSC assignment applies to ammunition over 125mm, as listed in Department of Army Supply Manuals / Catalogs. It does not apply to naval ordnance type. The Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions.
1325 P	Bombs. This partial FSC assignment applies to Bombs as listed in Department of Army Supply Manuals / Catalogs. It does not apply to Navy assigned Bombs as shown in list of assignments to the Navy; however, the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control, smoke and incendiary munitions, and for other loading, assembling and packing in excess of Navy owned capacity.
1330	Grenades.

Federal Supply Class Code	*Commodity*
FSC ("P"	after the FSC number indicates a partial FSC assignment)
1340 P	Rockets and Rocket Ammunition.
	This partial FSC assignment applies to:
	66mm Rocket, HEAT, M72.
	2.75" Rocket FFAR, Service and Practice.
	Heads MK5 and Mods (HEAT).
	HE, M151
	HE, XM229 (17 lb Warhead)
	HE, XM157 (Spotting Red)
	HE, XM158 (Spotting Yellow)
	MK61 Practice (5 lb Slug)
	XM230 Practice (10 lb)
	Motors MK4 and Mods (High Performance Aircraft).
	MK40 and Mods (Low Performance Aircraft)
	3.5 In. Rocket Heat, M35.
	Practice, M36
	Smoke, WP, M30
	4.5 In. Motor, Drill, M24.
	HE, M32.
	Practice, M33.
	Incendiary and toxicological rockets, as listed in Army Supply Bulletins.
	It does not apply to Navy assigned rockets as shown in list of assignments to the Navy. However, the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.
1345	Land Mines.
1365	Military Chemical Agents.
1370 P	Pyrotechnics.
	This partial FSC assignment does not apply to shipboard and aircraft pyrotechnics.
1375 P	Demolition Materials.
	This partial FSC assignment is applicable to Blasting Agents and supplies such as:
	Bangalore torpedo
	Blocks, demolition
	Caps, blasting, electric and nonelectric
	Charge, cratering
	Charge, shaped and demolition
	Chests, demolition platoon and squad
	Cord detonating
	Demolition equipment sets, with ancillary items
	Detonators, all types
	Dynamite
	Firing Devices
	Fuze, safety
	Kit, demolition
	Lighter, fuse
	Machine, blasting
	Primer, percussion cap
	It does not apply to Navy underwater demolition requirements.

Federal Supply Class Code	*Commodity*
FSC	("P" after the FSC number indicates a partial FSC assignment)
1376 P	Bulk Explosives. This partial FSC assignment is applicable to solid propellants and explosives such as: Ammonium Picrate (Explosive D) JAN-A-166A Trinitrotoluene (TNT) MIL-T-248A Tetryl JAN-T-339 Pantaerythrite Tetranitrate (PETN) JAN-P-387 RDX Composition B Composition B-3 Pentolite, 50 Composition C-3 Composition A-3 Composition A-4 Nitroguanidine (Picrate) It does not apply to production capacity for any of the above listed explosives at the U.S. Naval Propellant Plant, Indian Head, Maryland.
1377 P	Cartridge and Propellant Actuated Devices and Components. This partial FSC assignment is applicable to the following devices: (Reserved pending Services agreement as to items which shall be included in this assignment.)
1380	Military Biological Agents.
1390 P *	Fuzes and Primers. This partial FSC assignment applies to Fuzes and Primers for Army assigned ammunition. It does not apply to naval ordnance type, which is under DoD procurement assignment to the Department of the Navy; and guided missile fuzes.
2210	Locomotives.
2220	Rail Cars.
2240	Locomotive and Rail Car Accessories and Components.
2250	Track Materials, Railroad.
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors. The above two partial Federal Supply Class Assignments apply to tactical vehicles; trucks over 10,000 pounds Gross Vehicle Weight (GVW); and the following types of vehicles: Bus, convertible to ambulance; Truck, 4 x 4, convertible to ambulance; Truck, 4 x 4, dump, 9,000 GVW, with cut-down cab. These assignments do not apply to tracked landing vehicles which are not under DoD Coordinated Procurement assignment, and airport crash rescue vehicles, which are under DoD Coordinated Procurement assignment to the Department of the Air Force. With the exception of the types enumerated above, these assignments do not apply to commercial passenger carrying vehicles and trucks up to 10,000 pounds GVW, which are assigned for DoD Coordinated Procurement to the General Services Administration.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Federal Supply Class Code	*Commodity*
FSC ("P"	after the FSC number indicates a partial FSC assignment)
2330 P	Trailers. This partial FSC assignment does not apply to two wheel lubrication trailers, two wheel steam cleaning trailers, and troop transporter semitrailers which are not under DoD Coordinated Procurement assignment, and airport crash rescue trailer units which are under DoD Coordinated Procurement assignment to the Department of the Air Force.
2340 P	Motorcycles, Motor Scooters, and Bicycles. This partial FSC assignment does not apply to bicycles and tricycles.
2350	Tanks and Self-propelled Weapons.
2430	Tractors, Track Laying, High Speed.
2510 P **	Vehicular Cab, Body, and Frame Structural Components.
2520 P **	Vehicular Power Transmission Components.
2530 P **	Vehicular Brake, Steering, Axle, Wheel, and Track Components.
2540 P **	Vehicular Furniture and Accessories.
2590 P **	Miscellaneous Vehicular Components.
2610	Tires and Tubes, Pneumatic, except Aircraft.
2630	Tires, solid and cushion.
2640	Tire Rebuilding and Tire and Tube Repair Materials.
2805 P **	Gasoline Reciprocating Engines, except Aircraft; and Components.
2910 P **	Engine Fuel System Components, Nonaircraft.
2920 P **	Engine Electrical System Components, Nonaircraft.
2930 P **	Engine Cooling System Components, Nonaircraft.
2940 P **	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.
2990 P **	Miscellaneous Engine Accessories, Nonaircraft.
4210 P	Fire Fighting Equipment. This partial FSC assignment applies only to equipment developed by or under the sponsorship of the Department of the Army.
4230 P	Decontaminating and Impregnating Equipment. This partial FSC assignment applies only to items peculiar to chemical warfare.
4240 P	Safety and Rescue Equipment. This partial FSC assignment applies only to military respiratory protective equipment for chemical warfare.
5805 P	Telephone and Telegraph Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.
5815 P	Teletype and Facsimile Equipment. This partial FSC assignment applies only to military (wire) equipment, field type.
5820 P	Radio and Television Communication Equipment, except Airborne. This partial FSC assignment applies to non-tactical, off-the-shelf, commercially available radio and television equipment and supplies used by the Armed Forces Radio and Television Stations including equipment and supplies used by the Armed Forces for closed TV circuit educational and training programs.

Federal Supply Class Code	*Commodity*
FSC ("P"	after the FSC number indicates a partial FSC assignment.)
5830 P	Intercommunication and Public Address Systems: Except Airborne This partial FSC assignment applies only to military (wire) equipment, field type.
6135 P	Batteries, Primary. This partial FSC assignment applies to MIL type, dry cell batteries, only.
6625 P	Electrical and Electronic Properties Measuring and Testing Instruments. This partial FSC assignment applies only to instruments for testing military (wire) equipment, field type.
6645 P	Time Measuring Instruments. This partial FSC assignment applies to the following watches; aircraft instrument panel clocks; cases and spare parts therefor: Master navigation watches; pocket watches; stop watches; second setting wrist watches; wrist watches; athletic timers; aircraft clocks; aircraft panel clocks; mechanical aircraft clocks; navigation watch cases; pocket watch cases; watch holders; watch case assemblies and watch movements.
6660 P	Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to items peculiar to chemical warfare.
6695 P	Combination and Miscellaneous Instruments. This partial FSC assignment applies to jewel bearings only.
6820 P	Dyes. This partial FSC assignment applies only to items peculiar to chemical warfare.
6910 P	Training Aids. This partial FSC assignment applies only to items peculiar to Army assignments under weapons, fire control equipment, ammunition and explosives and chemical and biological warfare.
6920 P	Armament Training Devices. This partial FSC assignment applies to armament training devices as listed in DA Catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons. in DA catalogs SC 6910, ML/IL and SC 6920 ML/IL. It does not apply to clay pigeons.
6940 P	Communication Training Devices. This partial FSC assignment applies only to cade training sets, code practice equipment, and other telephone and telegraph training devices.
8130 P	Reels and Spools. This partial FSC assignment applies only to reels and spools for military (wire) equipment, field type.
8140 P	Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers peculiar to Army assignments under ammunitions, explosives, and chemical and biological warfare as listed in DA Catalog SC 8140 IL and SC 8140 ML.

(*See Footnotes on following page*)

* For purposes of procurement, Naval Ordnance comprises all arms, armor, and armament for the Department of the Navy and includes all offensive and defensive weapons, together with their components, controlling devices and ammunition used in executing the Navy's mission in National Defense (except small arms and those items of aviation ordnance procured from the Army).

** These partial FSC assignments apply only to repair parts peculiar to combat and tactical vehicles. In addition, the assignment in FSC-2805 applies to military standard engines 1.5 HP through 20 HP and parts peculiar therefor. Balance of these Federal Supply Classes are assigned to the Defense Supply Agency (Defense Construction Supply Center).

5-1201.4 *Department of the Navy.*

Federal
Supply
Class Code

Commodity

FSC ("P" after the FSC number indicates a partial FSC assignment.)

Electronic Equipment.

Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 for assignment of certain commercially developed radio sets to the Department of the Navy (i.e., developed without the use of government funds.)

1095 P Miscellaneous Weapons

This partial FSC assignment applies to line throwing guns only.

1310 P Ammunition, over 30mm up to 75mm.

This partial FSC assignment applies only to reels and spools for military

1325 P Bombs.

This partial FSC assignment applies to armor-piercing; depth bombs; externally suspended low drag bombs; and components and practice bombs therefor, as listed in Ord Pamphlets, and the MK 43, Target Detecting Device. With respect to this assignment the Department of the Army is responsible for the procurement of fillers and the loading, assembling and packing of toxicological, incapacitating riot control-smoke and incendiary munitions and for other loading, assembling and packing in excess of Navy-owned capacity.

1340 P Rockets and Rocket Ammunition.

This partial FSC assignment applies to:

Fuze, Rocket, V.T., MK93-0

2.25 In. Rocket SCAR, Practice
    Heads MK3 and Mods
    Motors MK15 and Mods
    MK16 and Mods
5 In. Rocket HVAR, service and practice
    Heads MK2 and Mods (common) MK6 and Mods (GP)
    MK4 and Mods (smoke) MK25 and Mods (ATAR)
    Motors MK10 and Mods
5 In. Rocket FFAR service and practice
    Heads MK24 and Mods (General Purposes)
    MK32 and Mods (Shaped Charged)
    MK26 and Mods (Illum)
    Motor MK16 and Mods

With respect to this assignment the Department of the Army is responsible for procurement of filler and for filling of all smoke and toxicological rockets.

1390 P Fuzes and Primers.

This partial FSC assignment applies to fuzes and primers for Navy assigned ammunition.

1550 P Drones.

This partial FSC assignment applies only to Drone, Model BQM34E.

1905 P Combat Ships and Landing Vessels.

This partial FSC assignment applies to landing vessels only.

1910 P Transport Vessels, Passenger and Troop.

This partial FSC assignment applies to ferryboats only.

Federal Supply Class Code	*Commodity*
FSC	("P" after the FSC number indicates a partial FSC assignment.)
1920	Fishing Vessels.
1925	Special Service Vessels.
1930	Barges and Lighters, Cargo
1935 P	Barges and Lighters, Special Purpose. This partial FSC assignment does not apply to Derricks, Pile Drivers, Rock Cutters, Concrete Mixing Plants, Mechanical Bank Grader Barges, Other Bank Revetment Barges; and Barge Power Plants.
1940	Small Craft.
1945 P	Pontoons and Floating Docks. This partial FSC assignment applies only to Naval Facilities Engineering Command Type Pontoons.
1950	Floating Drydocks.
1990 P	Miscellaneous Vessels. This partial FSC assignment applies to commercial sailing vessels only.
2010	Ship and Boat Propulsion Components.
2020	Rigging and Rigging Gear.
2030	Deck Machinery.
2040	Marine Hardware and Hull Items.
2060	Commercial Fishing Equipment.
2090	Miscellaneous Ship and Marine Equipment.
2820 P	Steam Engines, Reciprocating, and Components. This partial FSC assignment applies to Marine Main Propulsion Steam Engines only.
2825 P	Steam Turbines and Components. This partial FSC assignment applies to Marine Steam Turbines only.
4210 P	Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of Navy.
4410 P	Industrial Boilers. This partial FSC assignment applies only to Boilers for use aboard those ships assigned to the Navy for coordinated procurement.
4420 P	Heat Exchangers and Steam Condensers. This partial FSC assignment applies only to Heat Exchangers for use aboard those ships assigned to the Navy for coordinated procurement.
4925 P	Ammunition Maintenance and Repair Shop Specialized Equipment. This partial FSC assignment applies to sets, kits and outfits of tools and equipment for explosive ordnance as defined in pertinent Military Service regulations and documents.
5821 P	Radio and Television Communication Equipment, Airborne. This partial FSC assignment applies only to the following commercially developed radio sets. (The term "commercially developed" means that no government funds were provided for development purposes.) HF-101, 102, 103, 104, 105, 106, 107, 108, 109, 111, 113; ARC-94, 102, 105, 110, 112, 119, 120; MRC-95, 108; VC-102, 104, 105, 106, 109, 110; and components of the foregoing including the 490T antenna coupler.
6125 P	Converters, Electrical, Rotating. This partial FSC assignment applies only to Motor-Generator Sets for use aboard ships assigned to the Navy for coordinated procurement.
6320 P	Shipboard Alarm and Signal System. This partial FSC assignment applies only to Alarm Systems; Fire Alarm Systems; Indicating Systems; Telegraph Systems (Signal and Signaling) (Less Electronic Type) for use aboard ships assigned to the Navy for coordinated procurement.
6605 P	Navigational Instruments.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Federal Supply Class Code	*Commodity*
FSC ("P"	after the FSC number indicates a partial FSC assignment.) This partial FSC assignment applies only to lifeboat and raft compasses; aircraft sextants; Hand Leads (Soundings); Lead Reels; Sounding Machines and Pelorus Stands for use aboard ships assigned to the Navy for coordinated procurement.
6645 P	Time Measuring Instruments. This partial FSC assignment applies to the following instruments, cases and spare parts therefor: Chronometers including gimbal, padded and make break circuit. Clocks, Alarm; boat; deck; direct reading; electrical; floor; interval timer; marine; mechanical; master control; master program; master regulating; mechanical message center; nurses; program; shelf; stop; wall; watchman's. Counters, time period. Meters; engine running time; hour recording; and electrical time totalizing. Timers; bombing; engine hours; sequential; stop; and program. Program control instrument. Cases; chronometer, including gimbal and padded; chronometer carrying; makebreak circuit chronometer. Cans; chronometer shipping and storage. Clock keys; clock movements; clock motors.
6650 P	Optical Instruments. This partial FSC assignment applies only to Stands, Telescope, for use aboard ships assigned to the Navy for coordinated procurement.
6660 P	Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment, the developing Department is the department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.
6665 P	Hazard-Detecting Instruments and Apparatus. This partial FSC assignment applies only to Hazard Determining Safety Devices, for use aboard ships assigned to the Navy for coordinated procurement.
8140 P	Ammunition Boxes, Packages, and Special Containers. This partial FSC assignment applies only to boxes, packages and containers for 40mm ammunition.

5-1201.5 *Department of the Air Force*.

Federal Supply Class Code	Commodity
FSC ("P"	after the FSC number indicates a partial FSC assignment.)
	Electronic Equipment. Each Department is assigned procurement responsibility for those items which the Department either designed or for which it sponsored development. See FSC 5821 under Navy listing for assignment of certain commercially developed radio sets (*i.e.*, developed without the use of government funds).
1550 P	Drones. This partial assignment applies only to the following model drones: Model 147; Model 154; BQM 34A and MQM 34D.
2320 P	Trucks and Truck Tractors. This partial FSC assignment applies only to Airport Crash Rescue Vehicles.
2330 P	Trailers. This partial FSC assignment applies only to Airport Crash Rescue Trailer Units.
4210 P	Fire Fighting Equipment. This partial FSC assignment applies only to fire fighting equipment developed by or under the sponsorship of the Department of the Air Force.
6660 P	Meteorological Instruments and Apparatus. Each Department is assigned procurement responsibility for those systems, instruments and end items in FSC 6660 for which the Department either designed or for which it sponsored development. For purposes of this assignment the developing Department is the Department which awarded the developmental contract, notwithstanding that other Departments may have provided funds for the development.
6710 P *	Cameras, Motion Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.
6720 P *	Cameras, Still Picture. This partial FSC assignment does not apply to Submarine Periscope and Underwater Cameras.
6730 P *	Photographic Projection Equipment. This partial FSC assignment does not apply to 35mm Theater Projectors.
6740 *	Photographic Developing and Finishing Equipment.
6760 *	Photographic Equipment and Accessories.
6780 *	Photographic Sets, Kits, and Outfits.
8820 P	Live Animals Not Raised For Food. This partial FSC assignment applies only to the following types of working dogs: scout, sentry, patrol, mine/tunnel, tracker, detector-narcotic/contraband, sledge, bloodhound, water dog and patrol/detector.

* This partial FSC assignment does not apply to Photographic Equipment controlled by the Congressional Joint Committee on Printing, and Micro-Film Equipment and Supplies.

5-1201.6 *Defense Supply Agency.* [1]

Federal Supply Class Code	Commodity	DSA Center [2]
FSC	("P" after the FSC number indicates a partial FSC assignment.)	
2230	Right of Way Construction and Maintenance Equipment, Railroad.	DCSC
2410	Tractor, Full Track, Low Speed.	DCSC
2420	Tractors, Wheeled.	DCSC
2510 P [3]	Vehicular Cab, Body, and Frame, Structural Components.	DCSC
2520 P [3]	Vehicular Power Transmission Components.	DCSC
2530 P [3]	Vehicular Brake, Steering, Axle, Wheel and Track Components.	DCSC
2540 P [3]	Vehicular Furniture and Accessories.	DCSC
2590 P [3]	Miscellaneous Vehicular Components.	DCSC
2805 P [3]	Gasoline Reciprocating Engines, Except Aircraft; and Components.	DCSC
2815	Diesel Engines and Components.	DCSC
2895	Miscellaneous Engines and Components.	DCSC
2910 P [3]	Engine Fuel System Components, Nonaircraft.	DCSC
2920 P [3]	Engine Electrical System Components, Nonaircraft.	DCSC
2930 P [3]	Engine Cooling System Components, Nonaircraft.	DCSC
2940 P [3]	Engine Air and Oil Filters, Strainers and Cleaners, Nonaircraft.	DCSC
2990 P [3]	Miscellaneous Engine Accessories, Nonaircraft.	DCSC
3020	Gears, Pulleys, Sprockets and Transmission Chain.	DCSC
3030	Belting, Drive Belts, Fan Belts, and Accessories.	DCSC
3040	Miscellaneous Power Transmission Equipment.	DCSC
3110	Bearings, Antifriction, Unmounted.	DISC
3120	Bearings, Plain Unmounted.	DISC
3130	Bearings, Mounted.	DISC
3210	Sawmill and Planing Mill Machinery.	DGSC
3220	Woodworking Machines.	DGSC
3230	Tools and Attachments for Woodworking Machinery.	DGSC
3405 P [6]	Saws and Filing Machines.	DGSC
3408 P [6]	Machining Centers and Way-Type Machines.	DGSC
3410 P [6]	Electrical and Ultrasonic Erosion Machines.	DGSC
3411 P [6]	Boring Machines.	DGSC
3412 P [6]	Broaching Machines.	DGSC
3413 P [6]	Drilling and Tapping Machines.	DGSC
3414 P [6]	Gear Cutting and Finishing Machines.	DGSC
3415 P [6]	Grinding Machines.	DGSC
3416 P [6]	Lathes.	DGSC
3417 P [6]	Milling Machines.	DGSC
3418 P [6]	Planers and Shapers.	DGSC
3419 P [6]	Miscellaneous Machine Tools.	DGSC
3422 P [6]	Rolling Mills and Drawing Machines.	DGSC
3424 P [6]	Metal Heat Treating Equipment.	DGSC
3426 P [6]	Metal Finishing Equipment.	DGSC
3431	Electric Arc Welding Equipment.	DGSC
3432 P [6]	Electric Resistance Welding Equipment.	DGSC
3433 P [6]	Gas Welding, Heat Cutting & Metalizing Equipment.	DGSC
3436 P [6]	Welding Positioners and Manipulators.	DGSC
3438 P [6]	Miscellaneous Welding Equipment.	DGSC
3439 P [6]	Miscellaneous Welding, Soldering and Brazing Supplies and Accessories.	DGSC
3441 P [6]	Bending and Forming Machines.	DGSC
3442 P [6]	Hydraulic and Pneumatic Presses, Power Driven.	DGSC
3443 P [6]	Mechanical Presses, Power Driven.	DGSC
3444 P [6]	Manual Presses.	DGSC
3445 P [6]	Punching and Shearing Machines.	DGSC
3446 P [6]	Forging Machinery and Hammers.	DGSC
3447 P [6]	Wire and Metal Ribbon Forming Machinery.	DGSC

See footnotes at end of list.

Federal Supply Class Code	Commodity	DSA Center *
FSC	("P" after FSC number indicates partial FSC assignment.)	
3442 P [5]	Riveting Machines.	DGSC
3449 P [5]	Misc. Secondary Metal Forming and Cutting Machines.	DGSC
3450 P [5]	Machine Tools, Portable.	DGSC
3455 P [5]	Cutting Tools for Machine Tools.	DGSC
3456 P [5]	Cutting and Forming Tools for Secondary Metal Working Machines.	DGSC
3460 P [5]	Machine Tool Accessories.	DGSC
3461 P [5]	Accessories for Secondary Metalworking Machinery.	DGSC
3465 P [5]	Production Jigs, Fixtures and Templates.	DGSC
3470 P [5]	Machine Shop Sets, Kits, and Outfits.	DGSC
3510	Laundry and Dry Cleaning Equipment.	DGSC
3520	Shoe Repairing Equipment.	DGSC
3530	Industrial Sewing Machines & Mobile Textile Repair Shops.	DGSC
3610	Printing, Duplicating, and Bookbinding Equipment.	DGSC
3611 P [5]	Industrial Marking Machines.	DGSC
3620 P [5]	Rubber and Plastics Working Machinery.	DGSC
3635 P [5]	Crystal and Glass Industries Machinery.	DGSC
3650 P [5]	Chemical & Pharmaceutical Products Manufacturing Machinery.	DGSC
3655	Gas Generating and Dispensing Systems, Fixed or Mobile.	DGSC
3660 P [5]	Industrial Size Reduction Machinery.	DGSC
3680 P [5]	Foundry Machinery, Related Equipment and Supplies.	DGSC
3685 P [5]	Specialized Metal Container Manufacturing Machinery and Related Equipment.	DGSC
3693 P [5]	Industrial Assembly Machines.	DGSC
3694 P [5]	Clean Work Stations, Controlled Environment & Related Equipment.	DGSC
3695	Miscellaneous Special Industry Machinery.	DGSC
3710	Soil Preparation Equipment.	DCSC
3720	Harvesting Equipment.	DCSC
3740	Pest, Disease, and Frost Control Equipment.	DCSC
3770	Saddlery, Harness, Whips and Related Animal Furnishings.	DCSC
3805	Earth Moving and Excavating Equipment.	DCSC
3810	Cranes and Crane-Shovels.	DCSC
3815	Crane and Crane-Shovel Attachments.	DCSC
3820	Mining, Rock Drilling, Earth Boring, and Related Equipment.	DCSC
3825	Road Clearing and Cleaning Equipment.	DCSC
3830	Truck and Tractor Attachments.	DCSC
3835	Petroleum Production and Distribution Equipment.	DCSC
3895	Miscellaneous Construction Equipment.	DCSC
3910	Conveyors.	DCSC
3920	Materials Handling Equipment, Nonself-Propelled.	DGSC
3930	Warehouse Trucks and Tractors, Self-Propelled.	DCSC
3940	Blocks, Tackle, Rigging, and Slings.	DISC
3950	Winches, Hoists, Cranes, and Derricks.	DCSC
3990	Miscellaneous Materials Handling Equipment.	DGSC
4010	Chain and Wire Rope.	DISC
4020	Fiber Rope, Cordage and Twine.	DISC
4030	Fittings for Rope, Cable and Chain.	DISC
4110	Refrigeration Equipment.	DGSC
4120	Air Conditioning Equipment.	DGSC
4130	Refrigeration and Air Conditioning Components.	DGSC
4140	Fans, Air Circulators, and Blower Equipment.	DGSC
4210 P [5]	Fire Fighting Equipment.	DCSC

[List continued on next page]

See footnotes at end of list.

Federal Supply Class Code	Commodity	DSA Center*
FSC ("P" after FSC number indicates partial FSC assignment.)		
4220	Marine Lifesaving and Diving Equipment.	DCSC
4310	Compressors and Vacuum Pumps.	DCSC
4320	Power and Hand Pumps.	DCSC
4330	Centrifugals, Separators, and Pressure and Vacuum Filters.	DCSC
4440	Driers, Dehydrators, and Anhydrators.	DCSC
4450	Industrial Fan and Blower Equipment.	DCSC
4460	Air Purification Equipment.	DCSC
4510	Plumbing Fixtures and Accessories.	DCSC
4520	Space Heating Equipment and Domestic Water Heaters.	DCSC
4530	Fuel Burning Equipment Units.	DCSC
4540	Miscellaneous Plumbing, Heating and Sanitation Equipment.	DCSC
4610	Water Purification Equipment.	DCSC
4620	Water Distillation Equipment, Marine and Industrial.	DCSC
4630	Sewage Treatment Equipment.	DCSC
4710	Pipe and Tube.	DCSC
4720	Hose and Tubing, Flexible.	DCSC
4730	Fittings and Specialities; Hose, Pipe and Tube.	DCSC
4810	Valves, Powered.	DCSC
4820	Valves, Nonpowered.	DCSC
4930	Lubrication and Fuel Dispensing Equipment.	DCSC
5280	Sets, Kits, and Outfits of Measuring Tools.	DGSC
5305	Screws.	DISC
5306	Bolts.	DISC
5307	Studs.	DISC
5310	Nuts and Washers.	DISC
5315	Nails, Keys and Pins.	DISC
5320	Rivets.	DISC
5325	Fastening Devices.	DISC
5330	Packing and Gasket Materials.	DISC
5335	Metal Screening.	DISC
5340	Miscellaneous Hardware.	DISC
5355	Knobs and Pointers.	DISC
5360	Coil, Flat and Wire Springs.	DISC
5365	Rings, Shims and Spacers.	DISC
5410	Prefabricated and Portable Buildings.	DCSC
5420	Bridges, Fixed and Floating.	DCSC
5430	Storage Tanks.	DCSC
5440	Scaffolding Equipment and Concrete Forms.	DCSC
5445	Prefabricated Tower Structures.	DCSC
5450	Miscellaneous Prefabricated Structures.	DCSC
5510	Lumber and Related Basic Wood Materials.	DCSC
5520	Millwork.	DCSC
5530	Plywood and Veneer.	DCSC
5660	Fencing, Fences and Gates.	DCSC
5680 P	Miscellaneous Construction Materials. This partial FSC assignment applies only to airplane landing mat. (Also, see footnote 1 at end of list relative to purchase of DSA managed items in GSA assigned classes.)	DCSC
5905	Resistors.	DESC
5910	Capacitors.	DESC
5915	Filters and Networks.	DESC
5920	Fuses and Lightning Arrestors.	DESC
5925	Circuit Breakers.	DESC
5930	Switches.	DESC

[List continued on next page]

See footnotes at end of list.

INTERDEPARTMENTAL AND COORDINATED PROCUREMENT

Federal Supply Class Code	Commodity	DSA Center
FSC ("P" after FSC number indicates partial FSC assignment.)		
5935	Connectors, Electrical.	DESC
5940	Lugs, Terminals, and Terminals Strips.	DGSC
5945	Relays, Contractors, and Solenoids.	DESC
5950	Coils and Transformers.	DESC
5955	Piezoelectric Crystals.	DESC
5960	Electron Tubes and Associated Hardware.	DESC
5961	Semiconductor Devices and Associated Hardware.	DESC
5962	Microelectronic Circuit Devices.	DESC
5965	Headsets, Handsets, Microphones and Speakers.	DESC
5970	Electrical Insulators and Insulating Materials.	DGSC
5975	Electrical Hardware and Supplies.	DGSC
5977	Electrical Contact Brushes and Electrodes.	DGSC
5985	Antennas, Waveguides, and Related Equipment.	DESC
5990	Synchros and Resolvers.	DESC
5995	Cable, Cord, and Wire Assemblies: Communication Equipment.	DGSC
5999	Miscellaneous Electrical and Electronic Components.	DESC
6105	Motors, Electrical.	DGSC
6110	Electrical Control Equipment.	DGSC
6115	Generators and Generator Sets, Electrical.	DGSC
6120	Transformers: Distribution and Power Station.	DGSC
6145	Wire and Cable, Electrical.	DISC
6150	Miscellaneous Electric Power and Distribution Equipment.	DGSC
6210	Indoor and Outdoor Electric Lighting Fixtures.	DGSC
6220	Electric Vehicular Lights and Fixtures.	DGSC
6230	Electric Portable and Hand Lighting Equipment.	DGSC
6240	Electric Lamps.	DGSC
6250	Ballasts, Lampholders and Starters.	DGSC
6260	Nonelectrical Lighting Fixtures.	DGSC
6350	Miscellaneous Alarm and Signal Systems.	DGSC
6505 [4]	Drugs, Biologicals, and Official Reagents.	DPSC
6508 [4]	Medicated Cosmetics and Toiletries.	DPSC
6510 [4]	Surgical Dressing Materials.	DPSC
6515 [4]	Medical and Surgical Instruments, Equipment and Supplies.	DPSC
6520 [4]	Dental Instruments, Equipment, and Supplies.	DPSC
6525 [4]	X-Ray Equipment and Supplies: Medical, Dental and Veterinary.	DPSC
6530 [4]	Hospital Furniture, Equipment, Utensils, and Supplies.	DPSC
6532	Hospital and Surgical Clothing and Textile Special Purpose Items.	DPSC
6540 [4]	Opticians' Instruments, Equipment and Supplies.	DPSC
6545 [4]	Medical Sets, Kits, and Outfits.	DPSC
6630	Chemical Analysis Instruments.	DPSC
6635	Physical Properties Testing Equipment.	DGSC
6640	Laboratory Equipment and Supplies.	DPSC
6655	Geophysical and Astronomical Instruments.	DGSC
6670	Scales and Balances.	DGSC
6675	Drafting, Surveying and Mapping Instruments.	DGSC
6680	Liquid and Gas Flow, Liquid Level and Mechanical Motion Measuring Instruments.	DGSC
6750	Photographic Supplies.	DGSC
6810 [7]	Chemicals.	DFSC & DGSC
6820	Dyes.	DGSC

[List continued on next page]

See footnotes at end of list.

Federal Supply Class Code	Commodity	DSA Center[6]
FSC ("P" after FSC number indicates partial FSC assignment.)		
6830	Gases: Compressed and Liquefied.	DGSC
6840	Pest Control Agents and Disinfectants.	DGSC
6850[7]	Miscellaneous Chemical Specialties.	DFSC & DGSC
7210	Household Furnishings.	DPSC
7310	Food Cooking, Baking and Serving Equipment.	DGSC
7320	Kitchen Equipment and Appliances.	DGSC
7360	Sets, Kits and Outfits: Food Preparation and Serving.	DGSC
7610	Books and Pamphlets.	DGSC
7660	Sheet and Book Music.	DGSC
7690	Miscellaneous Printed Matter.	DGSC
8110	Drums and Cans.	DGSC
8120	Commercial and Industrial Gas Cylinders.	DGSC
8125	Bottles and Jars.	DGSC
8305	Textile Fabrics. FSC 8305 does not include laminated cloth used exclusively in the repair of lighter than air envelopes.	DPSC
8310	Yarn and Thread.	DPSC
8315	Notions and Apparel Findings. FSC 8315 does not include coated cloth tape used exclusively in the repair of lighter than air envelopes.	DPSC
8320	Padding and Stuffing Materials.	DPSC
8325	Fur Materials.	DPSC
8330	Leather.	DPSC
8335	Shoe Findings and Soling Materials.	DPSC
8340	Tents and Tarpaulins.	DPSC
8345	Flags and Pennants.	DPSC
8405	Outerwear, Men's.	DPSC
8410	Outerwear, Women's.	DPSC
8415	Clothing, Special Purpose. FSC 8415 includes all submarine clothing.	DPSC
8420	Underwear and Nightwear, Men's.	DPSC
8425	Underwear and Nightwear, Women's.	DPSC
8430	Footwear, Men's.	DPSC
8435	Footwear, Women's.	DPSC
8440	Hosiery, Handwear, and Clothing Accessories, Men's.	DPSC
8445	Hosiery, Handwear, and Clothing Accessories, Women's.	DPSC
8450	Children's and Infants' Apparel and Accessories.	DPSC
8455	Badges and Insignia.	DPSC
8460	Luggage.	DPSC
8465	Individual Equipment.	DPSC
8470	Armor, Personal.	DPSC
8475	Specialized Flight Clothing and Accessories.	DPSC
8905[8]	Meat, Poultry, and Fish.	DPSC
8910[8]	Dairy Foods and Eggs.	DPSC
8915[8]	Fruits and Vegetables.	DPSC
8920[8]	Bakery and Cereal Products.	DPSC
8925[8]	Sugar, Confectionery and Nuts.	DPSC
8930[8]	Jams, Jellies, and Preserves.	DPSC
8935[8]	Soups and Bouillons.	DPSC
8940[8]	Special Dietary Foods and Food Specialty Preparations.	DPSC

[List continued on next page]

See footnotes at end of list.

Federal Supply Class Code FSC	Commodity	DSA Center[4]
	("P" after FSC number indicates partial FSC assignment.)	
8945[5]	Food Oils and Fats.	DPSC
8950[5]	Condiments and Related Products.	DPSC
8955[5]	Coffee, Tea, and Cocoa.	DPSC
8960[5]	Beverages, Nonalcoholic.	DPSC
8970[5]	Composite Food Packages.	DPSC
8975[5]	Tobacco Products.	DPSC
9110	Fuels, Solid.	DFSC
9130	Liquid Propellants and Fuels, Petroleum Base.	DFSC
9140	Fuel Oils.	DFSC
9150	Oils and Greases: Cutting, Lubricating, and Hydraulic.	DFSC
9160	Miscellaneous Waxes, Oils, and Fats.	DFSC
9320	Rubber Fabricated Materials.	DGSC
9330	Plastics Fabricated Materials.	DGSC
9340	Glass Fabricated Materials	DGSC
9350	Refractories and Fire Surfacing Materials.	DGSC
9390	Miscellaneous Fabricated Nonmetallic Materials.	DGSC
9420 P	Fibers: Vegetable, Animal and Synthetic. This partial FSC assignment applies only to raw cotton and raw wool.	DPSC
9430 P	Miscellaneous Crude Animal Products, Inedible. This partial FSC assignment applies only to crude hides.	DPSC
9505	Wire, Nonelectrical, Iron and Steel.	DISC
9510	Bars and Rods, Iron and Steel.	DISC
9515	Plate, Sheet, and Strip: Iron and Steel.	DISC
9520	Structural Shapes, Iron and Steel.	DISC
9525	Wire, Nonelectrical, Nonferrous Base Metal.	DISC
9530	Bars and Rods, Nonferrous Base Metal.	DISC
9535	Plate, Sheet, Strip, and Foil: Nonferrous Base Metal.	DISC
9540	Structural Shapes, Nonferrous Base Metal.	DISC
9545	Plate, Sheet, Strip, Foil and Wire: Precious Metal.	DISC
9620 P	Minerals, Natural and Synthetic. This partial FSC assignment applies only to crude petroleum and crude shale oil.	DFSC
9925	Ecclesiastical Equipment, Furnishings and Supplies.	DGSC
9930	Memorials, Cemeterial and Mortuary Equipment and Supplies.	DGSC
9999	Miscellaneous Items.	DGSC

Footnotes for list in 5-1201.6

1. These assignments do not apply to items decentralized by the DSA Center Commander, *i.e.*, designated for purchase by each Military Department, and to those items in DSA assigned Federal Supply Classes, which may be assigned to GSA for supply management. In addition, see 5-1201.2(a) which describes conditions under which a Military Service may purchase (contract for) Military Service supply managed items in DSA assigned Federal Supply Classes. See notes 2 and 3 below for further exceptions pertaining to certain DSA assignments.

2. DSA assignments in FSC 2510, 2520, 2530, 2540, 2590, 2805, 2910, 2920, 2930, 2940 and 2990 do not apply to repair parts peculiar to combat and tactical vehicles, which are assigned for coordinated procurement to the Department of the Army. In addition, the assignment in FSC-2805 does not apply to military standard engines 1.5 HP through 20 HP and parts peculiar therefor, which are assigned for coordinated procurement to the Department of the Army.

3. This partial FSC assignment in FSC 4210 does not apply to Fire Fighting Equipment developed by or under the sponsorship of a Military Department. The procurement responsibility for such equipment is assigned to the Department which developed or sponsored its development.

4. The Defense Supply Agency has procurement responsibility for all the items in the Classes of FS Group 65. In addition, DSA has procurement responsibility for all equipment and supplies related to the medical, dental, veterinary professions in Non-Group 65 Classes where the Military medical services have the sole or prime interest in such items. The specific item coverage of these Non-Group 65 Items is published in the DOD Section of the Federal Supply Catalog for Medical Material C3-1 through C3-12, inclusive.

5. This assignment includes Health and Comfort Items listed in AR 700-23. It also includes resale items for commissary stores (including brand name items).

6. DSA Centers are identified as follows:
DCSC — Defense Construction Supply Center.
DESC — Defense Electronics Supply Center.
DFSC — Defense Fuel Supply Center
DGSC — Defense General Supply Center.
DISC — Defense Industrial Supply Center.
DPSC — Defense Personnel Support Center.

7. DFSC is responsible for procurement of only petroleum base items in FSC 6810 and FSC 6850.

8. This partial assignment applies only to secondary items not identified as IPE. Such secondary items are listed in the applicable Federal Supply Catalog Management Data Lists of each respective Service.

5–1201.7 *Defense Nuclear Agency.**

Nuclear Ordnance

Federal Supply Class Code	*Commodity*
1105	Nuclear Bombs.
1110	Nuclear Projectiles.
1115	Nuclear Warheads and Warhead Sections.
1125	Nuclear Demolition Charges.
1127	Nuclear Rockets.
1130	Conversion Kits, Nuclear Ordnance.
1135	Fuzing and Firing Devices, Nuclear Ordnance.
1140	Nuclear Components.
1145	High Explosive Charges, Propellants, and Detonators: Nuclear Ordnance.
1190	Specialized Test and Handling Equipment, Nuclear Ordnance.
1195	Miscellaneous Nuclear Ordnance.

* In addition to the above, assignments to DNA include all items for which DNA has integrated management responsibility in accordance with DoD Directive 5105.31.

5-1201.8 *General Services Administration.* *

Federal Supply Class Code	*Commodity*
FSC ("P"	after FSC number indicates partial FSC assignment.)
2310 P	Passenger Motor Vehicles.
2320 P	Trucks and Truck Tractors.
	The above two partial Federal Supply Class Assignments apply to all commercial passenger carrying vehicles and trucks up to 10,000 pounds Gross Vehicle Weight (GVW) except the following types which are assigned for DoD Coordinated Procurement to the Department of the Army.
	Bus, convertible to ambulance.
	Truck, 4 x 4, convertible to ambulance.
	Truck, 4 x 4, dump, 9,000 pounds GVW, with cut-down cab.
	(See Army Coordinated Procurement assignments in FSC 2310 and FSC 2320.)
3540	Wrapping and Packaging Machinery.
3550	Vending and Coin Operated Machines.
3590	Miscellaneous Service and Trade Equipment.
3750	Gardening Implements and Tools.
5110	Hand Tools, Edged, Nonpowered.
5120	Hand Tools, Nonedged, Nonpowered.
5130	Hand Tools, Power Driven.
5133	Drill Bits, Counterbores, and Countersinks: Hand and Machine.
5136	Taps, Dies and Collects: Hand and Machine.
5140	Tool and Hardware Boxes.
5180	Sets, Kits and Outfits of Hand Tools.
5210	Measuring Tools, Craftmen's.
5345	Disks and Stones, Abrasive.
5350	Abrasive Materials.
5610	Mineral Construction Materials, Bulk.
5620	Building Glass, Tile, Brick and Block.
5630	Pipe and Conduit, Nonmetallic.
5640	Wallboard, Building Paper, and Thermal Insulation Materials.
5650	Roofing and Siding Materials.
5670	Architectural and Related Metal Products.
5680	P** Miscellaneous Construction Materials.
7105	Household Furniture.
7110	Office Furniture.
7125	Cabinets, Lockers, Bins and Shelving.
7195	Miscellaneous Furniture and Fixtures.
7220	Floor Coverings.
7230	Draperies, Awnings, and Shades.
7240	Household and Commercial Utility Containers.
7290	Miscellaneous Household and Commercial Furnishings and Appliances.
7330	Kitchen Hand Tools and Utensils.
7340	Cutlery and Flatware.
7350	Tableware.
7410	Punched Card System Machines.

(List continued on next page)

See footnotes at end of list.

Federal Supply Class Code	*Commodity*
7420	Accounting and Calculating Machines.
7430	Typewriters and Office-type Composing Machines. This FSC assignment does not apply to machines controlled by the Congressional Joint Committee on Printing.
7450	Office-type Sound Recording and Reproducing Machines.
7460	Visible Record Equipment.
7490	Miscellaneous Office Machines. This FSC assignment does not apply to equipment controlled by the Congressional Joint Committee on Printing.
7510	Office Supplies. This FSC assignment does not apply to Office Supplies, including special inks, when DoD requirements of such items are procured through Government Printing Office channels.
7520	Office Devices and Accessories. This FSC assignment does not apply to office devices and accessories when DoD requirements of such items are procured through Government Printing Office channels.
7530	Stationery and Record Forms. This FSC assignment does not apply to Stationery and Record Forms when DoD requirements of such items are procured through Government Printing Office channels including those items covered by term contracts issued by GPO for tabulating cards and marginally punched continuous forms.
7710	Musical Instruments.
7720	Musical Instrument Parts and Accessories.
7730	Phonographs, Radios, and Television Sets: Home Type.
7740	Phonograph Records.
7810	Athletic and Sporting Equipment.
7820	Games, Toys, and Wheeled Goods.
7830	Recreational and Gymnastic Equipment.
7910	Floor Polishers and Vacuum Cleaning Equipment.
7920	Brooms, Brushes, Mops and Sponges.
7930	Cleaning and Polishing Compounds and Preparations.
8010	Paints, Dopes, Varnishes, and Related Products.
8020	Paint and Artists Brushes.
8030	Preservative and Sealing Compounds.
8040	Adhesives.
8105	Bags and Sacks.
8115	Boxes, Cartons and Crates.
8135	Packaging and Packing Bulk Materials.
8510	Perfumes, Toilet Preparations and Powders.
8520	Toilet Soap, Shaving Preparations and Dentifrices.
8530	Personal Toiletry Articles.
8540	Toiletry Paper Products.
8710	Forage and Feed.
8720	Fertilizers.
8730	Seeds and Nursery Stock.
9310	Paper and Paperboard.
9905	Signs, Advertising Displays, and Identification Plates.
9910	Jewelry.
9915	Collectors' Items.
9920	Smokers' Articles and Matches.

(See footnotes on following page)

Footnotes for list in 5–1201.8

* These GSA assignments do not apply to items as described under FSC 7430, 7490, 7510, 7520, and 7530, and those items in the GSA assigned Federal Supply Classes which have been retained for DSA supply management as listed in the applicable Federal Supply Catalog Management Data Lists. In addition, see 5–1201.2 which describes conditions under which a Military Service may purchase (contract for) Military Service Supply managed items in GSA assigned Federal Supply Classes.

** This partial FSC assignment does not include landing mats which are assigned to the Defense Supply Agency.

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BEST DOCUMENT AVAILABLE

SECTION VI

FOREIGN ACQUISITIONS

6-000 Scope of Section. This Section includes restrictions and procedures affecting acquisitions of foreign-made items; restrictions on purchases from Communist countries or areas; procedures affecting acquisitions from Canadian sources; guidance on the use of duty-free entry procedures for foreign items; special guidance (including pricing guidance) for Military Assistance Program acquisitions and Foreign Military Sales; procedures to promote liaison with overseas activities and compliance with government-to-government agreements for acquisition from foreign contractors; procedures for use of U.S.-owned foreign currency for payment of contracts; and procedures for the solicitation and evaluation of offers of defense equipment which are qualifying country end products.

6-001 Definitions. As used throughout this Section, the words and terms defined in this paragraph shall have the meanings set forth below unless a different definition is prescribed for a specific Part.

6-001.1 End Products.

(a) End products means articles, materials, and supplies that are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including supplies to be acquired by the Government for public use in connection with service contracts, but excluding installation and other services to be performed after delivery.

(b) Defense cooperation agreement country end product means an item listed in the defense cooperation country agreement and produced in that country.

(c) Domestic end product means (i) an unmanufactured end product which has been mined or produced in the United States, or (ii) an end product manufactured in the United States if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and U.S. duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) as to which the Secretary concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act (6-103.3).

(d) Foreign end product means an end product other than a domestic end product.

(e) FMS/offset arrangement country end product means (i) an unmanufactured end product mined or produced in a FMS/offset arrangement country, or (ii) an end product manufactured in a FMS/offset arrangement country if the cost of its qualifying country components and its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid. To obtain the waivers necessary to accord preferential treatment for a FMS/offset arrangement country end product, see the procedures at 6-1310.3(b)(1).

(f) Participating country end product means (i) an unmanufactured end product mined or produced in a participating country, or (ii) an end product manufactured in a participating country if the cost of its qualifying country components and its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and any duty whether or not duty is in fact paid.

(g) Qualifying country end product means (i) a participating country end product; (ii) a FMS/Offset arrangement country end product when the applicable Determination and Findings has been made waiving the Buy American Act restrictions; or (iii) a defense cooperation country agreement listed item.

6-001.2 Components.

(a) Components means those articles, materials, and supplies, which are directly incorporated in end products.

(b) Qualifying country component means (i) an item mined, produced, or manufactured in a participating country or in a FMS/Offset arrangement country when the applicable D&F has been made waiving the Buy American Act restrictions; or (ii) any item listed in a defense cooperation country agreement.

6-001.3 Defense equipment means any equipment, item of supply, component, or end product purchased by the Department of Defense.

6-001.4 Source (when restricted by such words as foreign, domestic, qualifying country, etc.) refers to the actual manufacturer or producer of the end product or component (product may encompass a report).

6-001.5 Countries.

(a) A defense cooperation country is a foreign country which has a defense cooperation agreement and for which a Determination and Findings was made by the Secretary of Defense waiving the Buy American Act restrictions for a list of mutually agreed items. These countries are listed at 6-1504.

(b) A FMS/offset arrangement country is a foreign country which has an offset arrangement negotiated in conjunction with a Foreign Military Sale and which arrangement provides for obtaining a waiver of the Buy American Act restrictions on a case-by-case basis. These countries are listed at 6-1310.1.

(c) A participating country is a NATO country which has a Memorandum of Understanding (MOU) or similar agreement with the U.S. and for which a blanket Determination and Finding was made by the Secretary of Defense waiving the Buy American Act restrictions. These countries are listed at 6-1401.

(d) Qualifying country is any country defined in (a), (b), and (c) above.

(e) United States means the States, the District of Columbia, Puerto Rico and possessions (see 1-201.12). It does not include leased bases or trust territories.

6-001.6 Offer.

(a) Defense cooperation country offer means an offer of a defense cooperation country end product including transportation to destination.

(b) Domestic offer means an offer of a domestic end product, including transportation to destination.

(c) FMS/offset arrangement country means an offer of a FMS/offset arrangement country end product, including transportation to destination.

(d) Foreign offer means an offer that is not a domestic offer. It includes transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

(e) Participating country offer means an offer of a participating country end product including transportation to destination.

(f) Qualifying country offer means an offer of a qualifying country end product including transportation to destination.

6-001.7 Concern.

(a) Domestic concern means an incorporated concern incorporated in the United States or an unincorporated concern having its principal place of business in the United States. (In the context of this Section, "concern" refers to a prospective or actual contractor. Thus, a contract with a foreign subsidiary or foreign branch or business office of a U.S. corporation would not be a contract with a domestic concern. Conversely, a contract executed by a foreign salesman or agent on behalf of a domestic concern would nevertheless be a contract with a domestic concern since the basic contractual and legal responsibility resides with the domestic concern.)

(b) Foreign concern means a concern that is not a domestic concern.

Part 1--Buy American Act--Supply Contracts

6-100 Scope of Part. This Part implements the Buy American Act (41 U.S.C. 10a-d) and the policies set forth in Executive Order 10582, dated 17 December 1954, with respect to supply contracts and to services which require the furnishing of end items (e.g., leasing of equipment). The Buy American Act does not otherwise apply to the purchaser of services.

6-101 Reserved.

6-102 General.

6-102.1 Buy American Act Requirements. Except as provided in 6-103, the Buy American Act requires that in the acquisition of supplies, only domestic end products shall be acquired for public use in the United States. In determining whether an end product is a domestic end product, only the end product and its components shall be considered. The Act and its implementation by E.O. 10582 and the Balance of Payments Program require the use of evaluation factors specified in 6-104.4.

6-102.2 Balance of Payments Program Requirements.

(a) The 50 percent evaluation factor in favor of domestic offers, implemented in 6-104.4, is an interim measure designed to alleviate the impact of DoD expenditures on the Nation's balance of international payments. The Department of Defense does not expect to use the 50 percent factor beyond the time when the U.S. balance of payments deficit is corrected.

(b) Although the evaluation procedures in 6-104.4 reduce overseas dollar expenditures resulting from defense acquisition at an acceptable increase in budgetary costs, this result is an average and overall result rather than one which precisely obtains in each case. This is so because, both under the Buy American Act and as a matter of administrative practicability, items are classified absolutely as "foreign" or "domestic" and varying degrees within each class are not recognized. However, deviations (see 1-109) from the evaluation procedures of 6-104.4 should be considered for acquisitions over $250,000 when it is anticipated that the low domestic offer will involve relatively substantial foreign expenditures or that the low foreign offer will involve relatively substantial domestic expenditures. Any request for such a deviation should be made sufficiently in advance of solicitation to permit the solicitation to describe the evaluation procedure that will be used. Such deviations require the advance approval of the Under Secretary of Defense Research and Engineering (USDRE) or his designee.

6-102.3 Acquisition From, Through, or For Other Government Agencies. In acquisitions from or through other Government agencies, responsibility for compliance with the Buy American Act and Balance of Payments Program evaluation procedures (see 6-104.4) is as follows:

(a) The General Services Administration has responsibility for compliance with the Buy American Act for foreign end items acquired by Defense activities from GSA stores depots, direct purchases for such activities, or purchases from a mandatory Federal Supply Schedule which does not include any domestic source for that item. Balance of Payments evaluation procedures are not applicable to these transactions.

(b) Defense activities have the responsibility for compliance with the Buy American Act and Balance of Payments evaluation procedures when they purchase a foreign end item from (i) a mandatory Federal Supply Schedule which includes a domestic end product, or (ii) a nonmandatory Federal Supply Schedule.

(c) Defense activities purchasing items of equipment and supplies for civil works projects for use in the United States by civil agencies or departments shall not apply the Balance of Payments Program 50 percent evaluation factor when evaluating offers; only the evaluation factors of the Buy American Act, as implemented by Executive Order 10582, dated 17 December 1954, shall be applied.

(d) In the case of coordinated acquisition under Section V, Part II, compliance with the Buy American Act and Balance of Payments evaluation procedures is the responsibility of the Contracting Department except when the Requiring Department specifies a foreign end product; in which case, the determination that a domestic end product is not available, including consideration of foregoing the acquisition or providing a U.S. substitute, shall be the responsibility of the Requiring Department (see 5-1106.3(b)).

6-103 Exceptions.

6-103.1 Use Outside the United States. The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States. However, the Balance of Payments Program is not so restricted. In order to uniformly implement the Balance of Payments Program worldwide, the preferences and procedures of the Buy American Act for soliciting and awarding contracts for supplies and applicable services have been extended as a matter of policy to acquisitions of supplies and applicable services for use outside the United States (see Section VI, part 8).

6-103.2 Nonavailability in the United States.

(a) The Buy American Act does not apply to (i) end products of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (ii) components of end products manufactured in the United States or a qualifying country if the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Certain items determined to be exempt under these exceptions are set forth in 6-105.

(b) A nonavailability determination is not required for end products or components listed in (c) below or in 6-105. Otherwise, acquisitions of foreign end products or components on the basis of nonavailability shall be made only after a determination of nonavailability has been made and the acquisition is approved:

- (i) at a level above the contracting officer, if the amount involved is estimated not to exceed $25,000;
- (ii) by the chief of the contracting office concerned, if the acquisition is estimated not to exceed $250,000;

(iii) by the head of the contracting activity (HCA) or his immediate deputy or in the case of the Defense Advanced Research Projects Agency (DARPA), the Director, DARPA, if the acquisition is estimated not to exceed $2 million; or

(iv) by the Secretary of the Department concerned, or his designee at a level no lower than an HCA, if the acquisition is estimated to exceed $2 million.

In making such determination, and granting such approval, the feasibility of foregoing the requirement or providing a U.S. substitute shall be considered.

(c) Acquisitions in the following categories may be made without determinations or approvals otherwise required by this 6-103.2:

(i) Spare and replacement parts, if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;

(ii) Foreign drugs by the Defense Personnel Support Center where the Chief of the Division of Technical Operations, Directorate of Medical Materiel, has determined that only the requested foreign drug will fulfill the requirements;

(iii) Swords and scabbards; and

(iv) Books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which domestic editions are not available.

6-103.3 Unreasonable Cost or Inconsistency With the Public Interest. The restrictions of the Buy American Act and the Balance of Payments Program (see 6-102.2) do not apply when it is determined by the Secretary concerned (a) that the cost of a domestic end product would be unreasonable (see 6-104.4(b)) or (b) that acquisition of a domestic end product would be inconsistent with the public interest.

6-103.4 Scrap. Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

6-103.5 Reserved.

6-103.6 Reserved.

6-103.7 Commissary Resale. The provisions of the Buy American Act do not apply to supplies purchased specifically for commissary resale. However, nonsubsistence items of foreign origin purchased for resale in domestic commissaries must meet the evaluation criteria in 6-104.4.

6-104 Procedures.

6-104.1 Applicability. The following procedures apply to all contracts involving the acquisition of defense equipment including contracts exclusively for articles, materials, or supplies for use outside the United States.

6-104.2 Solicitation of Offers.

(a) Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-105) is available to prospective contractors upon request. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(b) When quotations are obtained orally, vendors shall be informed that only domestic and qualifying country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis (see 6-103.2 and 6-105), or the price for the offered foreign end product meets the evaluation criteria in 6-104.4.

6-104.3 Reserved.

6-104.4 Evaluation of Offers.

(a) In accordance with the Buy American Act, the Secretary of Defense has determined that where the procedures in (b) below result in the acquisition of foreign end products, the acquisition of domestic end products would be (i) unreasonable in cost or (ii) inconsistent with the public interest. (See 6-103.3.)

(b) Except as provided in this subparagraph (b) and in (d) and (f) below, offers shall be evaluated so as to give preference to domestic offers as follows:

(1) Each nonqualifying country offer of defense equipment (but see exception (ii) below) shall be adjusted for purposes of evaluation either by excluding any duty from the nonqualifying country offer and adding 50 percent of the offer (exclusive of duty) to the remainder, or by adding to the nonqualifying country offer (inclusive of duty) a factor of 6 percent of that offer, whichever results in the greater evaluated price, except that a 12-percent factor shall be used instead of the 6-percent factor if (i) the firm submitting the low acceptable domestic offer is a small business concern, or a labor surplus area concern, or both, (ii) small purchase procedures (see Section III, Part 6) are not used, and (iii) any contract award to a domestic concern which would result from applying the 12-percent factor, but which would not result from applying the 6-percent or 50-percent factor, would not exceed $100,000. If an award for more than $100,000 would be made to a domestic concern if the 12-percent factor is applied, but would not be made if the 6-percent or 50-percent factor is applied, the matter shall be submitted to the Secretary of the Department concerned for decision as to whether the award to the small business or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest. (See 6-103.3.) If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In other instances, use the tie-breaking procedures in 2-407.6. When more than one line item is offered in response to a solicitation, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the solicitation specifically provides that award may be made on a particular group of items.

(2) In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example E below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example F

below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example G below).

(c) The following examples illustrate how the procedure in (b) above should be applied. Throughout these examples, "domestic offer--large" means a domestic offer which is not from a small business or labor surplus area concern, "domestic offer--small" means a domestic offer which is from either a small business concern or a labor surplus area concern or both.

EXAMPLE A

Nonqualifying Country Offer, including duty of $4,500	$14,500
Domestic Offer--Large	15,100
Domestic Offer--Small	15,110

Award on Domestic Offer--Large. Domestic Offer--Small is out because it is not the low acceptable domestic offer. Nonqualifying Country Offer, if adjusted by the 50-percent factor, would be $14,500 less $4,500 duty, (i.e., $10,000), plus 50-percent of $10,000 (i.e., $5,000), or $15,000; but if adjusted by the 6-percent factor, it would be $14,500 plus 6 percent of $14,500 (i.e., $870), or $15,370; therefore, the 6-percent factor is added and Domestic Offer--Large is the low evaluated offer.

EXAMPLE B

Nonqualifying Country Offer, including duty of $2,000	$12,000
Domestic Offer--Large	15,000

Award on Domestic Offer--Large. Nonqualifying Country Offer, adjusted by 50-percent factor, is $15,000; adjusted by 6-percent factor, it is $12,720. Therefore, Nonqualifying Country Offer is evaluated at $15,000, resulting in a tie and consequent award on the Domestic Offer--Large.

EXAMPLE C

Nonqualifying Country Offer, including duty of $3,500	$13,500
Domestic Offer--Large	17,000
Domestic Offer--Small	15,100

Award on Domestic Offer--Small. Nonqualifying Country Offer, adjusted by 50-percent factor is $15,000; adjusted by 12-percent factor, it is $15,120. Therefore, it is evaluated at $15,120, resulting in award on the Domestic Offer--Small.

EXAMPLE D

Nonqualifying Country Offer, including duty of $70,000	$270,000
Domestic Offer--Large	310,000
Domestic Offer--Small	302,000

Submit the case to the Secretary of the Department concerned. Nonqualifying Country Offer, adjusted by 50-percent factor is $300,000; adjusted by 12-percent factor, it is $302,400; adjusted by 6-percent factor, it is $286,200. Therefore, Domestic Offer--Small is in line for possible award only because of the bidder's small business or labor surplus area status. But since the contract award would exceed $100,000, the matter requires Secretarial decision.

EXAMPLE E

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer - Large	10,500
Domestic Offer - Small	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is 9,000; adjusted by 12-percent factor it is 8,960. Therefore, it is evaluated at $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE F

Nonqualifying Country Offer, including duty of $2,000	$8,000
Domestic Offer - Large	10,500
Domestic Offer - Small	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying Country Offer, adjusted by 50-percent factor is $9,000; adjusted by 12-percent factor it is 8,960. Therefore it is evaluated at $9,000 which is still lower than both domestic offers. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offers had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE G

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(d) Where a qualifying country offer is received for defense equipment listed in 6-1405 or 1-2207, rejection of that offer in the interest of protecting the domestic mobilization base is required except when the quantity for which the offer is made has been identified as a quantity in excess of that required to maintain the U.S. defense mobilization base for those items. In those instances where it has been determined prior to solicitation that the item is not to be supplied from any foreign source, offerors shall be so notified in the solicitation. Where rejection of a qualifying country offer is contemplated for reasons of national interest or for mobilization base considerations and the defense equipment involved is not listed in 6-1405 or 1-2207, a copy of the proposed decision shall be forwarded to OUSDRE(AP) (International Acquisition), 10 working days in advance of issuance of the rejection.

(e) When proposed awards are submitted for Secretarial decision pursuant to (b) above, each submission shall include a copy of each offer being considered for award, the date the offer expires, including extensions, a copy of the abstract of bids or proposals, and a statement justifying the proposed awards. Submissions should be forwarded to allow 21 days for processing and Secretarial consideration, unless the nature of the item or market conditions indicate the need for processing in a shorter time.

(f) When performing the evaluation in (b) above for items for civil works activities, offers of qualifying country end products shall not be subject to the 50-percent evaluation factor of the Balance of Payments Program, but shall be subject to the 6-percent and 12-percent evaluation factors of the Buy American Act, unless a specific waiver of the Buy American Act is otherwise obtained for that acquisition through the procedures of 6-103.3.

6-104.5 Clauses. Except for simplified small purchase procedures, insert the clauses at 7-103.10, 7-104.3, 7-104.32, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-104.6 Reserved.

6-105 List of Excepted Articles, Materials, and Supplies. Pursuant to the Buy American Act, it has been determined that the articles, materials, and supplies listed below, when purchased as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. When required to be incorporated into (i) an end product or construction material manufactured in the United States, or (ii) a qualifying country end product or construction material, these items or components may be regarded as being of domestic origin. (See 6-001, or for construction material, 18-506.4).

Acetylene black
Asbestos, amosite
Bananas
Beef extract
Bismuth
Brazil nuts, unroasted
Cadmium, ores and flue dust
Calcium cyanamide
Capers
Cashew nuts
Chestnuts

Chicle
Chrome ore or chromite
Cinchona bark
Cobalt, in cathodes, rondelles, or other primary forms.
Cocoa beans
Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.
Coffee, raw or green bean
Cork, wood or bark and waste
Diamonds, industrial stones
Emetine, bulk
Ergot, crude
Fair linen, altar
Fibers of the following types: Abace, agave, coir, flax, jute, and palmyra.
Goat and kid skins
Graphite, natural
Hand sewing needles
Hemp yarn
Hog bristles for brushes
Hyoscine, bulk
Ipecac, root
Leather, sheepskin, hair-type
Menthol, natural bulk
Mica
Nickel, primary, in ingots, pigs, shot, cathodes, or similar forms; nickel oxide and nickel salts
Nitroguanidine (also known as picrite)
Olive oil
Olives (green), pitted or stuffed in bulk
Opium, crude
Petroleum, crude oil; unfinished oils and finished products (See definitions below)
Platinum and platinum group metals refined, as sponge, powder, ingots, or cast bars
Pyrethrum flowers
Quartz crystals
Quebracho
Radium salts
Rosettes
Rubber, crude and latex
Rutile
Silk, raw
Sperm oil
Spices and herbs in bulk
Sugars, raw (Part 3 of Section VI, however, applies)
Talc, block, steatite
Tantalum
Tapioca flour and cassava
Tartar, crude; tartaric acid and cream of tartar in bulk
Tea in bulk

Thread, metallic (gold)
Tin
Vanilla beans
Venom, cobra
Wax, carnauba
Woods of the following species: Angelique, balsa, ekki, greenheart, lignum vitae, mahogany and teak

Petroleum Definitions, as used in this Part

(a) Crude oil means crude petroleum as it is produced at the wellhead and liquids (under atmospheric conditions) that have been recovered from mixtures of hydrocarbons which existed in a vaporous phase in a reservoir and that are not natural gas products.

(b) Finished products means any one or more of the following petroleum oils, or a mixture or combination of such oils, which are to be used without further processing except blending by mechanical means:

(i) liquefied gases—hydrocarbon gases recovered from natural gas or produced from petroleum refining and kept under pressure to maintain a liquid state at ambient temperatures;

(ii) gasoline—a refined petroleum distillate which by its composition, is suitable for use as a carburant in internal combustion engines;

(iii) jet fuel—a refined petroleum distillate used to fuel jet propulsion engines;

(iv) naphtha—a refined petroleum distillate falling within a distillation range overlapping the higher gasoline and the lower kerosenes;

(v) fuel oil—a liquid or liquefiable petroleum product burned for lighting or for the generation of heat or power and derived directly or indirectly from crude oil, such as kerosene, range oil, distillate fuel oils, gas oil, diesel fuel, topped crude oil, residues;

(vi) lubricating oil—a refined petroleum distillate or specially treated petroleum residue used to lessen friction between surfaces;

(vii) residual fuel oil—a topped crude oil or viscous residuum, which, as obtained in refining or after blending with other fuel oil, meets or is the equivalent of Military Specification Mil-F-859 for Navy Special Fuel Oil and any other more viscous fuel oil, such as No. 5 or Bunker C;

(viii) asphalt—a solid or semisolid cementitious material, which gradually liquefies when heated, in which the predominating constituents are bitumins, and which is obtained in refining crude oil;

(ix) natural gas products—liquids (under atmospheric conditions), including natural gasoline, which are recovered by a process of absorption, adsorption, compression, refrigeration, cycling, or a combination of such processes, from mixtures of hydrocarbons that existed in a vaporous phase in a reservoir and which, when recovered and without processing in a refinery, otherwise fall within any of the definitions of products contained in (ii) through (v), inclusive, of this paragraph (b).

(c) Unfinished oils means one or more of the petroleum oils listed in (b) above, or a mixture or combination of such oils, which are to be further processed other than by blending by mechanical means.

6-106 Buy American Act-Construction Contracts. See Section XVIII, Part 5.

Part 2—Reserved

6-200 Reserved.

Part 3—Appropriations Act Restrictions

6-300 Scope of Part. This Part implements the Defense Appropriations Act restriction on the availability of appropriated funds for the acquisition of any article of food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or specialty metals. However, reference should be made to the current Department of Defense Appropriations Act as a check on the current applicability of such restriction. This Part also implements the restriction on acquisition of foreign buses contained in Section 404 of Public Law 90-500 (see 6-306), and the restriction on R&D contracting with foreign sources contained in Section 744 of Public Law 92-570 (see 6-307), and the restriction for the construction of major components of the hull or superstructure of any naval vessel or the construction of any naval vessel in foreign shipyards (see 6-308). Nothing herein shall affect the applicability of the Buy American Act or the Balance of Payments Program (see Parts 1 and 8 of this Section).

6-301 Definitions. As used in this Part, the following terms have the meaning set forth below.

(a) Possessions. As used in the phrase "United States or its possessions", the term "possessions" includes Puerto Rico.

(b) United States means the States and the District of Columbia.

(c) Specialty metals means:

- (i) steels where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or which contains more than 0.25 percent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium;
- (ii) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 percent;
- (iii) titanium and titanium alloys; or
- (iv) zirconium and zirconium base alloys.

6-302 Restriction. Except as provided in 6-303, there shall not be acquired supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric, which have not been grown or produced in the United States or its possessions; or specialty metals, including stainless steel flatware which have not been melted in steel manufacturing facilities located within the United States or its possessions but this does not restrict the acquisition of cotton or wool reprocessed or reused in the United States or its possessions or of foods manufactured or processed in the United States or its possessions.

6-303 Exceptions. The restriction of 6-302 does not apply to the following:

- (i) acquisitions outside the United States in support of combat operations;
- (ii) acquisitions by vessels in foreign waters;

(iii) emergency acquisitions or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;

(iv) acquisitions of those supplies listed in 6-105 as to which the list does not make this Part expressly applicable;

(v) small purchases (for the purpose of this exception, a small purchase shall mean an acquisition action, as distinguished from a single line item, involving a total dollar amount not in excess of $10,000);

(vi) acquisitions of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 percent of the total price of the end item; Provided, That the estimated value does not exceed $10,000 or 3 percent of the total price of the end item, whichever is greater;

(vii) any articles of food or clothing or any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool, as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(viii) supplies purchased specifically for commissary resale (see 6-103.7);

(ix) purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;

(x) purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and

(xi) purchases of specialty metals (see 7-104.93(b)) or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).

6-304 Procedures.

6-304.1 Acquisition of Food, Clothing, Woven Silk and Woven Silk Blends, Spun Silk Yarn for Cartridge Cloth, Synthetic Fabric, or Coated Synthetic Fabric, or Supplies containing Mohair or Cotton, or Specialty Metals. Except as permitted by 6-303, food, clothing (not covered by 6-304.2), woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, any form of mohair or cotton, or specialty metals including stainless steel flatware will be acquired, only if grown, reprocessed, reused, melted, or produced in the United States or its possessions.

6-304.2 Acquisition of Items Containing Wool (Except Mohair).

(a) The Secretaries have determined that to the extent that application of the procedures in this subparagraph 6-304.2 results in the acquisition of any articles of wool (except mohair) not grown, reprocessed, reused, or produced in the United States or its possessions, a satisfactory quality and sufficient quantity of such articles grown, reprocessed, reused, or produced in the United States or its possessions cannot be acquired as and when needed at U.S. market prices.

(b) Offers for supplies of which wool is a part will be solicited on the following alternative bases:

(i) manufactured in the United States or its possessions from domestic wool;

(ii) manufactured in the United States or its possessions from foreign wool; and

(iii) manufactured in the United States or its possessions from a blend of (percent) domestic wool and (percent) foreign wool.

(c) Each solicitation for supplies of which wool is a component part will contain the provision in 7-2003.48. The evaluation factor will be computed in accordance with (f) below, and the amount of the factor will be inserted in place of the blank in (c) of the provision in 7-2003.48.

(d) If, on the date of opening of offers, the average market price of domestic wool of usable grades is no more than 10 percent above the average of the prices of representative types and grades of domestic wools in the wool category that includes the wool required by the specifications (see (f) below), which prices reflect the current incentive price as established by the Secretary of Agriculture, and if reasonable offers have been received for the advertised quantity offering 100-percent-domestic wools, the contract will be awarded for domestically produced articles using 100-percent-domestic wools and the procedure set forth in (e) and (f) below will be disregarded.

(e) In the evaluation of offers under this Part, an evaluation factor computed in accordance with (f) below will be added to that portion of the offered price that represents foreign wool to be furnished or used in performance of the contract, and award will be made accordingly. In the event that tie offers result from such evaluation, award will be made to the offeror proposing to furnish or use the most domestic wool.

(f) The evaluation factor to be used under (e) above will be 10 percent of the average of the following prices of representative types and grades of domestic wools within that one of the following categories which includes the wool required by the specifications. (The following prices reflect the current incentive price of $0.62 per pound grease basis converted to grade and type clean basis.)

Representative Type and Grade	Price Clean Basis per pound Dollars
Group 1--Grades 60's and finer	
Category 1--Staple, Average and Good French Combing (worsted type)	

The average of the following grades:
Territory Original Bag Wool
Average and Good French Combing, 64's and finer....1.7748
Graded Territory and Texas Wool
Staple and Good French Combing, One-half Blood,
60's/62's...1.6946
Graded Fleece Wool
Staple and Good French Combing, 64's and finer.....1.7862
Staple and Good French Combing, One-half Blood,
60's/62's...1.6259

Category 2—Short Average and Good French Combing and Clothing (woolen type)
The average of the following grades:
Territory Original Bag Wool
Short, French Combing and Clothing, fine (64's,
not to exceed 15% of 60's/62's)...................1.5801
Graded Territory and Texas Wool
Average and Good French Combing, One-half Blood,
60's/62's...1.6145
Graded Fleece Wool
Average and Good French Combing, 64's and finer....1.7061
Average and Good French Combing, One-half Blood,
60's/62's...1.5343

Group 2—Grades 50's-60's

Category 3—Staple and Good French Combing (worsted)
The average of the following grades:
Graded Territory and Texas Wool
Staple and Good French Combing, Three-Eighths Blood,
56's/58's...1.4656
Staple and Good French Combing, 50's/48's,
One-Quarter Blood.................................1.3397
Graded Fleece Wool
Staple and Good French Combing, Three-Eighths Blood,
56's/58's...1.3626
Staple and Good French Combing, 50's/48's,
One-Quarter Blood.................................1.2710

Category 4—Average French Combing (woolen type)
The average of the following grades:
Graded Territory and Texas Wool
Average French Combing, Three-Eighths Blood,
56's/58's...1.3053
Average French Combing, 50's/48's, One-Quarter
Blood...1.2023
Graded Fleece Wool
Average French Combing, Three-Eighths Blood
56's/58's...1.2137
Average French Combing, 50's/48's, One-Quarter
Blood...1.0878

Group 3--Grades Below 50s

Category 5--Staple and Good French The average of the following grades: Graded Fleece Wool	
Low One-Quarter Blood, 46's, 4 inches or more in length	1.1565
Common and Braid, 44's/36's, 5 inches or more in length	1.0763

(g) See Section VI, Part 11, for procedures for using U.S.-owned foreign currency for payment of contracts for foreign-end products.

6-305 Contract Clauses. See 7-104.13 and 7-104.93.

6-306 Acquisition of Foreign Buses. Section 404 of the Act of September 20, 1968. (Public Law 90-500), the Department of Defense Appropriation Authorization Act for Fiscal year 1969, provides that:

> "No funds authorized for appropriation for the use of the Armed Forces of the United States under the provisions of this Act or the provisions of any other law shall be available for the purchase, lease, rental, or other acquisition of multipassenger motor vehicles (buses) other than multipassenger motor vehicles (buses) manufactured in the United States, except as may be authorized by regulations promulgated by the Secretary of Defense solely to insure that compliance with this prohibition will not result in either an uneconomical procurement action or one which would adversely affect the national interests of the United States."

The objective of this statutory provision is to assure that only buses manufactured in the United States shall be used to satisfy requirements of United States Armed Forces located throughout the world for bus transportation, where such buses are available and where their use would not be uneconomical or contrary to the national interests of the United States. It should be applied whether the buses are purchased, leased, rented, or made available under contracts for transportation services. The use of foreign manufactured buses is authorized where the Head of the Contracting Activity determines that the use of U.S.-manufactured buses would be uneconomical or would adversely affect the national interests of the United States. However, foreign buses may be acquired without such determination in the following circumstances:

(i) When U.S.-manufactured buses are not available in time to satisfy requirements which cannot be postponed, foreign-manufactured buses may be used for a temporary period of time but not to exceed the lead time required for acquisition and delivery of U.S.-manufactured buses.

(ii) When the requirement for buses is of a temporary nature to meet a special but nonrecurring requirement or where a recurring requirement is sporadic and infrequent, foreign-manufactured buses may be used for the temporary periods of time not to exceed the period of time needed to meet the nonrecurring or the recurring infrequent requirement.

(iii) When foreign-manufactured buses are made available at no direct or indirect acquisition cost to the U.S. Government, foreign-manufactured buses may be used.

6-307 Restriction on R&D Contracting with Foreign Sources.

(a) Section 744 of the Defense Appropriations Act for FY 1973 (Public Law 92-570) provides that no funds appropriated for the Department of Defense are available for entering into any contract or agreement with any foreign corporation, organization, person, or other entity for the performance of research and development in connection with any weapon system or other military equipment for the Department of Defense when there is a U.S. corporation, organization, person, or other entity equally competent to carry out such research and development and willing to do so at a lower cost.

(b) The above provision does not change the rules for the selection of research and development contractors set forth in Section IV, Part 1, (see in particular 4-102 and 4-106). However, when a U.S. and a foreign source are considered equally competent, the contracting officer will make a determination as to which of the sources will provide the services required at the lowest estimated cost to the Government. Criteria for evaluating cost estimates are contained in 4-106.5.

6-308 Hull and Superstructure of Naval Vessels. Each year the Department of Defense Appropriations Authorization Act contains the Burns-Tollefson Amendment which reads:

> "Provided, That none of the funds herein provided for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign shipyards for the construction of major components of the hull or superstructure of such vessel: Provided further, That none of the funds herein provided shall be used for the construction of any naval vessel in foreign shipyards."

This Amendment is incorporated into the Department of Defense Appropriations Act each year and is located under Shipbuilding and Conversion, Navy.

FOREIGN ACQUISITIONS

Part 4--Purchases from Certain Communist Areas

6-401 General Policy. It is the general policy of the Department of Defense that supplies which originated in, were located in, or were transferred from or through the communist areas of North Korea, Vietnam, or Cuba (except supplies which have been lawfully imported into the United States, its possessions, or Puerto Rico), shall not be acquired for public use, notwithstanding the provisions of any Part of this Section, and that Government contractors and subcontractors shall not acquire for use in the performance of any Government contract or subcontract thereunder any supplies or services originating from such Communist areas.

6-402 Exceptions.

(a) Supplies from the Communist areas of North Korea, Vietnam, or Cuba may be acquired only in unusual situations; for example, in an emergency or when the supplies are not available from any other source and a substitute supply is not acceptable. For small purchases (as defined in Section III, Part 6), the contracting officer shall determine that there is need for an exception in accordance with Departmental procedures. For other than small purchases, an exception shall be approved by the Secretary of the Department concerned. Before granting an exception for other than small purchases, the Secretary concerned shall obtain the advice of the Assistant Secretary of Defense (International Security Affairs); however, such advice is not required in emergency purchases or where supplies are not available from any other source and substitute supplies are not acceptable.

(b) For procedures for using U.S.-owned foreign currency for payment of contracts for foreign end products, see Section VI, Part 11.

6-403 Procedures.

(a) With respect to contracts for supplies, services, or construction when acceptance is to take place within the United States, its possessions, or Puerto Rico, the contracting officer shall assume that any supplies not produced in the United States have been lawfully imported into the United States and, consequently, that the requirements of this Part have been met.

(b) In all contracts for supplies, services, or construction when acceptance is to take place outside the United States, its possessions, or Puerto Rico, insert the clause in 7-103.15; except that the clause need not be included as provided in 6-402.

(c) Additional restrictions pertaining to the acquisition of steel mill products containing chromium are set forth in Section VI, Part 3.

Part 5--Canadian Purchases

6-501 Mutual Canadian-American Interests. Because of the close geographical proximity of the United States and Canada and because of the mutual interest of both nations in the defense of North America, various steps have been taken during and since World War II to coordinate their economic efforts in the common defense, so as to achieve:

(i) greater integration of military production,
(ii) greater standardization of military equipment,
(iii) wider dispersal of production facilities,
(iv) establishment of supplemental sources of supply, and
(v) greater flow of defense supplies and equipment between the two countries.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs of Canada and the United States and to assure Canada a fair opportunity to share in the production of military equipment and materiel involving programs of mutual interest to Canada and the United States and in the research and development connected therewith. Accomplishment of these purposes requires (i) the exemption of the restrictions of the Balance of Payment Program and the Buy American Act with respect to acquisitions for public use of supplies mined, produced, or manufactured in Canada in the manner prescribed in Parts 1 and 8 of this Section; and (ii) the Canadian Commercial Corporation, in placing contracts with Canadian or U.S. concerns, to insert suitable provisions in such contracts, obtaining for the Department of Defense the same production rights, data and information that the Department of Defense would obtain for itself pursuant to the Defense Acquisition Regulation if the Department were placing the contracts with U.S. concerns.

6-502 Agreement With the Government of Canada

(a) The agreement set forth in 6-1406.1(a) dated 27 July 1956, as amended 17 December 1956, 31 May 1957, 6 January 1961, and 15 October 1962, between the Department of Defence Production (Canada) and the Department of Defense sets forth policies and provides for the implementation of procedures with respect to all contracts for supplies and services placed with the Canadian Commercial Corporation (an agency of the Government of Canada) on or after 1 October 1956.

(b) Subsequent to the execution of the agreement referred to in (a) above, the reorganization of the Canadian Government's departments and agencies vested the contracting authority of the former Canadian Department of Defence Production in the Department of Supply and Services. Pursuant to that reorganization, the authority of the Department of Defence Production to enter into cooperative development projects under the Memorandum of Understanding (6-1406.1(b)) is vested in the Canadian Department of Industry, Trade and Commerce.

(c) This agreement (see 6-1406.1(a)) and associated enabling provisions permit Canadian firms, including Canadian Crown corporations, a fair opportunity to participate in the production of defense equipment and materiel involving defense programs of interest to both nations.

(d) A contract with a supplier or contractor located in Canada should normally be made with and administered through the Canadian Commercial Corporation. (See 6-504.2.)

(e) In connection with contracts placed with the Canadian Commercial Corporation, the Department of Supply and Services (Canada) provides without charge to the Defense Departments and Agencies, among other things, such contract administration services as cost and pricing analysis, industrial security, accountability and disposal of Government property, production expediting, compliance with Canadian labor laws, processing of termination claims and disposal of termination inventory, customs documentation, processing of disputes and appeals, and such other related contract administration functions as may be required with respect to the Canadian Commercial Corporation contract with the Canadian supplier. Additionally, in connection with such contracts, audits, when required, are performed by the Audit Services Bureau, Department of Supply and Services (Canada), and the Department of National Defence (Canada) provides inspection personnel, services and facilities, at no charge to the Defense Departments and Agencies.

6-503 Guarantee by Canadian Government. The Canadian Government guarantees to the U.S. Government all commitments, obligations, and covenants of the Canadian Commercial Corporation in connection with any contract or order issued to said Corporation by any contracting activity of the U.S. Government. The Canadian Government has likewise waived notice of any change or modification which may be made from time to time in these commitments, obligations, or covenants.

6-504 Procedures for Canadian Purchases.

6-504.1 Bidding Procedures.

(a) Solicitation of Canadian Firms.

(1) Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.

(2) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items (see 2-205.1(b)).

(3) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, KIA-OS6, Canada.

(4) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.

(5) Small purchases (see Section III, Part 6) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation (but see 3-603.1(g)).

(b) Submission of Offers.

(1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate

its acceptance of offers by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offeror; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation; and a statement that the Corporation shall subcontract 100 percent with the offeror.

(2) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid-opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly, Provided, That the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting office prior to bid opening or the closing date for receipt of proposals.

(3) All formally advertised bids shall be submitted by the Canadian Commercial Corporation in terms of U.S. currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

(4) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of U.S. currency; in which event, contracts arising therefrom shall provide for payment in U.S. currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates. (See 6-1406.1(a).)

6-504.2 Contracting Procedures.

(a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Ave., Hull, Quebec, Canada, (mail address - Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, K1A-0S6 Canada), and at 2450 Massachusetts Ave., N.W., Washington, D.C. 20008. Contracts should normally be awarded to and administered through the Export Supply Centre office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract, Provided, however, That the approval of the Corporation shall be obtained on any matters involving changes to the contract.

(b) The general policy in (a) above need not be followed for purchases negotiated for experimental, developmental, or research work under 3-205 or 3-211, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-1406.1(b); purchases negotiated under 3-202 for public exigency; purchases negotiated under 3-203 for small purchases; or purchases made by U.S. Defense activities located in the Dominion of Canada.

(c) Prices in the contracts shall identify the type of currency; i.e., United States or Canadian. When contracts provide for payment in Canadian currency, the contract price shall be quoted in terms of Canadian dollars and shall identify the amount by the initials CN; e.g., $1,647.23CN. The contract shall clearly indicate on its face the US/Canadian conversion rate at the time of award and the US dollar equivalent of the Canadian dollar contract amount.

6-504.3 Termination Procedures. The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the U.S. contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Defence Production (Canada) contracts (see 8-216). The U.S. agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Comercial Corporation with respect to settlement of any subcontracts placed in the United States, including disposal of inventory. The settlement of such U.S. subcontracts shall be in accordance with this Regulation.

6-504.4 Acceptance of Canadian Supplies. Under f.o.b.-origin contracts with the Canadian Commercial Corporation where inspection has been performed by the Department of National Defence (Canada), pursuant to paragraph 6 of the Letter of Agreement (6-1406.1(a)), acceptance of supplies or services which are in accordance with the terms of the contract, shall be made by the Department of National Defence (Canada) on behalf of the Defense Departments and Agencies. Signing of the acceptance certificate on the applicable United States Department of Defense inspection and acceptance form shall be considered satisfactory evidence for payment purposes.

6-504.5 Industrial Security. Industrial Security for Canada shall be in accordance with 6-1403.4 and pursuant to the United States-Canada Industrial Security Agreement of 31 March 1952, as amended.

6-505 Contract Administration.

(a) When services are requested from the Defense Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:

DCASMA, Ottawa
6th Floor, Canadian Building
219 Laurier Avenue, West
Ottawa, Ontario, Canada (KIA0S5)

(b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DoD funds (DoD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-All other DoD components) whether payment is in Canadian or U.S. dollars shall be:

Disbursing Office, Defense Contract Administration
Services Region, Cleveland
1240 East 9th St., Anthony J. Celebrezze Federal Building
Cleveland, Ohio 44199

Part 6--Duty and Customs

6-601 Scope of Part.

(a) This Part sets forth policies and procedures for excepting from import duty certain supplies that are imported into the United States in connection with Defense contracts. Ordinarily, duty is payable for the importation of non-Defense supplies obtained outside the United States. Two exceptions to this rule are available to the Department of Defense: "Emergency purchases of war materials abroad" by a Military Department may be imported duty-free pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States; and certain supplies (not including equipment) for vessels or aircraft operated by the United States may be imported duty-free pursuant to 19 U.S.C. 1309. This Part prescribes the uses and limits of these two exceptions.

(b) This Part does not deal with or affect the evaluation of offers of foreign supplies. Rules for such evaluation are in Parts 1, 3, 13, 14, and 15 of this Section. Although the procedures of this Part may require or permit duty-free entry to be accorded foreign supplies in a given case, this in itself neither precludes nor requires the inclusion of duty in evaluating an offer of such supplies.

6-602 Policy. The issuance of duty-free entry certificates in appropriate situations will result in important savings to military appropriations. Such certificates must be limited to carefully selected situations lest they result in unanticipated profits to contractors, especially under fixed-price-type contracts, and involve the Government in administrative expenses outweighing any possible savings to military appropriations. It is DoD policy to use duty-free entry certificates wherever there is reasonable assurance that advantages in the form of savings to military appropriations will outweigh the administrative and other costs of processing duty-free entry certificates and of maintaining controls to verify that the full benefit of the certificates inures to the Government. A contractor which has been awarded a fixed price-type-contract based on providing a domestic end product or component cannot subsequently furnish a foreign end product or component (including a qualifying country end product or component) and receive a duty-free entry certificate in accordance with 7-104.31(b) without an appropriate reduction in contract price.

6-603 Emergency Purchases of War Materials Abroad.

6-603.1 Definition. Any acquisition of foreign supplies constitutes "an emergency purchase of war material" if:

- (i) the supplies comprise--
  - (A) weapons, munitions, aircraft, vessels, or boats;
  - (B) agricultural, industrial, or other supplies used in the prosecution of war or for the national defense; or
  - (C) supplies, including components or equipment, necessary for the manufacture, production, processing, repair, servicing, or operation of supplies within (A) or (B) above; and
- (ii) the acquisition--
  - (A) is made in time of war or during a national emergency;

(B) is made because of a shortage of domestic supply, pursuant to a decision that the supplies are necessary for the adequate maintenance of the Armed Services;

(C) is made for the use of U.S. forces abroad or U.S. vessels in foreign waters; or

(D) consists of captured enemy war material, materials requisitioned by U.S. forces abroad, or materials rebuilt from other materials owned by, or turned over to U.S. forces, or materials loaned or given to a Military Department of the U.S. Government under exchange agreements with foreign governments.

6-603.2 Requirements.

(a) To assure that the policy of 6-602 is carried out for emergency purchases of war materials abroad, one or both of the clauses in 6-603.3(a) and (b) shall be included in each negotiated contract in excess of $100,000 unless the minimum dollar limits in 6-603.3 (a) and (b), respectively, apply. Notwithstanding these dollar limits, either or both of the clauses in 6-603.3(a) and (b) may be inserted in any other negotiated contract where the contracting officer determines that to do so would further the policy in 6-602 and would be consistent with the limitations in (b) below, and in any such case the dollar figure in paragraphs (a) and (d) of the clause in 7-104.31(b) may be reduced appropriately.

(b) Duty-free entry certificates shall be issued as required by contracts containing any of the contract clauses described in 6-603.3. Consistent with 6-602, duty-free entry certificates may be issued in connection with any other contract for an "emergency purchase of war material" that falls within one of the following categories:

(i) Direct purchases abroad regardless of whether title passes at point of origin or at destination in the United States, Providing, the contract states that the final price is exclusive of duty;

(ii) Purchases abroad by a Government prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), regardless of whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, the criteria stated in (iii) below should be followed; and

(iii) Purchases abroad by a fixed-price contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes, provided (A) the fixed- price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty; (B) the prime contractor and, where applicable, the subcontractors concerned certify that the supplies so purchased are to be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and that the duty will be paid if such supplies or any portion thereof are utilized for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and (C) such acquisition abroad is authorized by the terms of the prime contract, the applicable subcontract, or by the contracting officer. In any such case, the procedures required by the clauses in 6-603.3 and by 6-603.4 shall be followed to the extent practicable.

6-603.3 Contract Clauses.

(a) Duty-Free Entry for Specified Items. Within the limits of 6-603.2(a), the clause in 7-104.31(a) and the provision in 7-2003.49 shall be used when the contracting officer knows at the time of execution of the contract that foreign supplies (other than those for which duty-free entry is to be accorded pursuant to (c) below) on which the estimated aggregate duty exceeds $1,000, are to be imported into the United States, its possessions, or Puerto Rico, in connection with performance of the contract.

(b) Duty-Free Entry for Items Not Identified in the Contract. Within the limits of 6-603.2(a), the clause in 7-104.31(b) shall be used unless the contracting officer anticipates that, in connection with the performance of the contract, neither the prime contractor nor any first-tier subcontractor will make any purchase of foreign supplies in excess of $10,000 that would not be covered by the clauses in (a) or (c) of this paragraph.

(c) Duty-Free Entry - Qualifying Country End Products and Components. The clause in 7-104.32 shall be inserted in all contracts for supplies and in all contracts for services involving the furnishing of supplies, except that it need not be inserted in the case of simplified small purchase procedures and in contracts for supplies exclusively for use outside the United States. (See 6-104.5.)

6-603.4 Customs, Entries and Duty-Free Certificates.

(a) When a prime contract involving foreign supplies contains the clause in 7-104.31(a) or (b) and the prime contractor sends a notification of a purchase of foreign supplies under the contract to the Contract Administration Office (CAO) designated in the contract, the CAO will verify that the prime contract includes the Duty-Free Entry for Certain Specified Items clause for the items identified or the Notice of Imports--Possible Duty-Free Entry clause; and in the latter case, that the contracting officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for a reduction in contract price in the amount of duty which would be payable if duty-free entry certificates were not issued pursuant to the provisions of this clause. The CAO will then forward the notification to Commander, Defense Contract Administration Services Management Area, New York, 60 Hudson Street, New York, New York 10013. The notification will be forwarded as an enclosure to the information provided in the format shown below.

To: Commander
DCASMA, New York
Attn: Transportation Officer
Contract..........issued to..........(Contractor).

Enclosed is a contractor notification of the purchase of foreign supplies. Verification has been made that:

(...) The prime contract includes DAR Clause 7-104.31(a) Duty-Free Entry for Certain Specified Items for the items identified on the enclosed notification.

(...) The prime contract includes DAR Clause 7-104.31(b) Notice of Imports--Possible Duty-Free Entry and the Contracting Officer has agreed to furnish a duty-free entry certificate for the items identified in exchange for an appropriate reduction in contract price.

The contract is expected to be completed by...............

Signature....................
Title........................

(b) When the Government agrees to execute duty-free entry certificates for supplies, in accordance with the clauses in 7-104.31, the contractor shall be notified that the foreign supplier is to include on the bill of lading (or other shipping document) the information required to be inserted on such documents as provided in the clause. Failure to include such information on the bill of lading (or other shipping document) will result in the shipment being treated as a shipment without benefit of free entry under Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(c) Upon receipt of a request for duty-free entry, the designated Government representative shall promptly prepare the required Customs Forms and execute the duty-free entry certificate in accordance with (d) below and forward two copies of Customs Form 7501 and one copy of Customs Form 7501A to the District Director of Customs submitting the request.

(d) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501 or attached thereto in the following form:

(date)...............

I certify that the acquisition of this material constituted an emergency purchase of war material abroad by the (indicate Department) and it is accordingly requested that such material be admitted free of duty pursuant to Schedule 8, Part 3, Item No. 832.00, Tariff Schedules of the United States.

(Name)....................
(Title)..
(Title of Government representative who has been designated to execute free entry certificates for the above-named Department.
(Organization)................................

6-603.5 Immediate Release Permits. Immediate release permits, executed on Customs Form 3461 (Application for Special Permit for Delivery of Perishable and Other Articles, Immediate Delivery of Which Is Necessary), entitle all shipments qualifying as "emergency purchases" of war material abroad to be released immediately by the District Directors of Customs at the various ports of entry, prior to and pending the filing of Customs Form 7501 and 7501A and a duty-free entry certificate. The existence of an immediate release permit on file at a port of entry does not dispense with the necessity of filing Customs Form 7501 and 7501A and appropriate duty-free entry certificates. Each Department shall designate the individuals responsible for issuance of Immediate Release Permits.

6-604 Supplies for Vessels or Aircraft Operated by the United States.

(a) Subject to the considerations set forth in 6-602, a duty-free entry certificate may be issued when "certain supplies (not including equipment)" are purchased for vessels or aircraft operated by the United States. As used in this paragraph, the term "certain supplies (not including equipment)" includes articles known as "stores", such as food, medicines and toiletries, and, in addition, all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags and polishes. It does not include portable articles necessary and appropriate for the navigation, operation or maintenance of the vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment". The procedures to be followed in the issuance of such certificates shall be prescribed by the respective Departments.

(b) The duty-free entry certificate referred to in this paragraph shall be printed, stamped, or typed on the face of Customs Form 7501, or attached thereto, and shall be executed by a duly designated officer or civilian official of the appropriate Department in the following form:

(date)....................

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name)....................
(Title)....................
(Organization)....................

6-605 Reserved.

FOREIGN ACQUISITIONS

Part 7--Military Assistance Program Acquisitions

6-700 Scope of Part. This part implements the Military Assistance Program portion of the Foreign Assistance Act of 1961 (Section 604, 22 U.S.C. 2354) and the policies set forth in the President's Determination under Section 604(a) of the said Act (Memorandum of October 18, 1961) and in Executive Order 10973 dated 3 November 1961.

6-701 Reserved.

6-702 Statutory Requirements.

(a) Section 604(a) of the Foreign Assistance Act of 1961 as implemented provides that funds made available under the Act shall not be used for acquisition outside the United States except:

(i) to acquire items required for military assistance which are not produced in the United States;

(ii) to make local purchases for administrative purposes;

(iii) to use local currency available for military assistance purposes; or

(iv) where the Assistant Secretary of Defense (ISA) certifies that exclusion of acquisition outside the United States would seriously impede attainment of Military Assistance Program objectives.

(b) Where a MAP order involves acquisition covered by a certification issued in accordance with (a)(iv) above, the Director of Military Assistance, Office of the Assistant Secretary of Defense (International Security Affairs), will specify in the order that the Military Department is authorized to contract offshore.

6-703 Procedures.

6-703.1 Applicability. The following procedures apply to all contracts for the Military Assistance Program (other than those excepted pursuant to 6-702) citing funds authorized by the Foreign Assistance Act of 1961, or citing funds made available under Department of Defense Appropriation Acts when it is known at the time of acquisition that the items being acquired are to fill existing Military Assistance Program orders and that DoD appropriations are to be reimbursed from Foreign Assistance Act funds. The requirements of this paragraph do not apply to issues from DoD inventories or to replenishment of such inventories.

6-703.2 Method of Purchase. Acquisition for the Military Assistance Program shall be restricted to domestic concerns and to U.S. end products as defined in 7-2003.51. Except for this restriction on solicitation, acquisition shall be made by formal advertising, wherever practicable, in accordance with the policy of 2-102.1. Subject to the limitations prescribed in Part 1 of Section III and pursuant to the authority of 10 U.S.C. 2304(a), acquisition may be effected by negotiation under any appropriate exception of 10 U.S.C. 2304(a) (see Section III, Part 2). The Foreign Assistance Act of 1961 shall not be used as authority to negotiate under 10 U.S.C. 2304(a)(17).

6-703.3 Certificate. When the acquisition is solely to fill existing Military Assistance Program orders, the solicitation shall so state. When the acquisition consists of both Military Assistance Program items and non-Military Assistance Program items, the solicitation shall clearly designate the Military Assistance Program items. In either instance, the solicitation shall require that each offer for end products include the certificate in 7-2003.50.

6-703.4 Contract Clause. The clause in 7-2003.51 shall be inserted in all acquisitions of end products for the Military Assistance Program.

6-704 Exemption from Examination of Records Requirement.

6-704.1 General. Military Assistance Program purchases authorized to be made outside the United States under the Foreign Military Sales Act of 1968, as amended, and the Arms Export Control Act of 1976, as amended, are exempt (Executive Order No. 11223, dated 12 May 1965) from the requirement for examination of records by the Comptroller General (10 U.S.C. 2313(b) and Section 3(b), Public Law 85-804) in the following circumstances:

(i) contracts with foreign contractors (including foreign governments) to be performed outside the United States; and

(ii) contracts, and amendments and modifications thereof, entered into pursuant to Public Law 85-804 (see 17-501), Provided, That the Department concerned shall make a determination that it is impracticable to include the Examination of Records clause or to obtain compliance therewith; such determinations may be made by any officer or official authorized to approve contracts, and amendments and modifications thereof, pursuant to 17-201.

Notwithstanding the exemptions permitted above, the contracting officer, where practicable, shall include the Examination of Records clause in contracts covered in (i) above.

6-704.2 Department of Defense Audit and Records. Contracts exempted under 6-704.1(i) from the requirement for examination of records by the Comptroller General shall nevertheless include the Audit by Department of Defense clause set forth in 7-104.41 in accordance with the requirements of that paragraph. When the clause in 7-104.41(a) is used, the second sentence of paragraph (c) shall be deleted.

FOREIGN ACQUISITIONS

Part 8--Balance of Payments Program

6-800 Scope of Part.

(a) This Part implements the Department of Defense Balance of Payments Program with respect to all acquisitions of (i) services which require the furnishing of end items (e.g., leasing of equipment) and supplies required for use outside the United States, except Petroleum and Military Assistance Program acquisitions (see Section VI, Part 7), and Foreign Military Sales (see Section VI, Part 13) and (ii) scientific and technical knowledge, resulting in dollar expenditures outside the United States and Canada. However, the exception regarding Military Assistance Program and FMS acquisitions does not apply to 6-804. Defense requirements as to the use of U.S. Flag vessels, which affect the Balance of Payments Program, are set forth in Section I, Part 14.

(b) The Balance of Payments Program is an interim measure imposed by the Department of Defense to alleviate the impact of DoD expenditures on the nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the former applies to acquisitions required for use outside the United States, and the latter applies only to acquisitions required for use in the United States. Nevertheless, it is the policy of the Department of Defense to implement the Balance of Payments Program using evaluation procedures similar to those which implement the Buy American Act (see 6-104 and 6-105).

6-801 Prohibition Against Fragmenting Acquisitions. As to those provisions of this Part which state dollar limitations below which exceptions permitting the purchase of foreign items may be made if certain conditions are satisfied, requirements aggregating more than any such limitations shall not be broken into separate purchases which are less than such limitations merely for the purpose of allowing such exceptions.

6-802 Real Property Construction, Repair and Maintenance. All projects for construction, repair, and maintenance of real property outside the United States must be approved in accordance with DoD Directive 7060.4(AR-37-43; AFR 85-6/AFM 86-1; NAVFACINST 7020.6). Contracts for such projects will require that specified U.S. materials will be used or that Government materials and equipment will be furnished, only when the cost of the U.S. items (including transportation and handling costs) does not exceed the cost of foreign items plus 50 percent. A differential greater than 50 percent may be used when specifically authorized in the project approval.

6-803 Supply and Applicable Service Contracts.

6-803.1 Procedure.

(a) Except as provided in 6-803.2, proposed acquisitions of supplies and applicable services for use outside the United States shall be accomplished in accordance with the evaluation procedures in (d) below.

(b) Solicitation of Offers. Solicitations shall state that the specific information as to articles, materials, and supplies excepted from these procedures (see 6-803.2) is available to prospective contractors upon request. When quotations are obtained orally, vendors shall be informed that only domestic and qualified country end products shall be acceptable other than those items which have been excepted either on a blanket or an individual basis (see 6-803.2) or the price for the nonqualifying country end item meets the evaluation criteria in (d) below. When only domestic end products are acceptable, the solicitation shall so state (e.g., see 6-104.4(d)).

(c) Reserved.

(d) Evaluation.

(1) In accordance with the Balance of Payments Program, where these procedures result in the acquisition of foreign end products, the acquisition of domestic end products is deemed unreasonable in cost or inconsistent with the public interest. Except as provided herein and in 6-104.4(d), offers shall be evaluated so as to give preference to domestic offers as follows:

a. Each nonqualifying country offer of defense equipment (but see exception in b. below) shall be adjusted for purposes of evaluation by increasing such offer by 50 percent. If the foregoing procedure results in a tie between a nonqualifying country offer, as evaluated, and a domestic offer, award shall be made on the latter. In all other instances, use the tie-breaking procedures in 2-407.6.

b. In the event that a domestic offer, a qualifying country offer, and a nonqualifying country offer compete for defense equipment, the qualifying country offer shall be evaluated without applying the price differentials of this paragraph, whereas the nonqualifying country offer shall be subjected to the price differentials (see Example A below). However, in the event the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted (see Example B below). In the event a qualifying country offer competes against a nonqualifying country offer and no domestic offer is submitted, they shall be evaluated on an equal basis (see Example C below).

(2) The following examples illustrate how the procedure in (1) above should be applied.

EXAMPLE A

Nonqualifying Country Offer	$6,000
Domestic Offer	8,900
Qualifying Country Offer	8,800

Award on Qualifying Country Offer. The nonqualifying country offer, adjusted by 50-percent factor is $9,000. The qualifying country offer receives the award because it is evaluated without adjustment and is the lowest offer.

EXAMPLE B

Nonqualifying Country Offer	$6,000
Domestic Offer	9,500
Qualifying Country Offer	8,800

Award on Nonqualifying Country Offer. Nonqualifying country offer, adjusted by 50-percent factor is $9,000. It is still lower than the domestic offer. Accordingly, the qualifying and nonqualifying country offers are evaluated on an equal basis as if the domestic offer had never been submitted and the award is made on the nonqualifying country offer.

EXAMPLE C

Nonqualifying Country Offer	$10,000
Qualifying Country Offer	11,500

Award on Nonqualifying Country Offer. Since there is no domestic offer, the nonqualifying country and qualifying country offers are evaluated on an equal basis and the award is made on the nonqualifying country offer.

(e) Clauses. Except for simplified small purchase procedures, and as provided in 6-803.2(a) insert the clauses at 7-103.10, 7-104.3, 7-104.106, and 7-2003.47 in accordance with the instructions for their use. If requested, the contracting officer should advise the offeror of the effect of the required clauses.

6-803.2 Exceptions.

(a) Acquisitions of end products (including construction materials) and applicable services for use outside the United States should be made in the following cases without regard to the origin of the end products. In these cases, the clauses in 7-104.3, 7-104.106 and 7-2003.47 shall not be used.

- (i) Treaty or Executive Agreement—acquisitions required to be made from indigenous sources pursuant to a treaty or executive agreement between governments.
- (ii) Small Purchases—acquisitions by contracting officers located outside the United States, which are estimated not to exceed $10,000 in foreign cost.
- (iii) Perishable Subsistence—acquisitions of perishable subsistence items when it is determined that delivery from the United States would destroy or significantly impair their quality at the point of consumption. The determination shall be made prior to acquisition by the individuals designated in (b)(1) below or their immediate deputies, except that this authority may be redelegated for acquisitions estimated not to exceed $500,000 in foreign cost. A determination is not required for the acquisition of perishable subsistence items for commissary resale.
- (iv) Panamanian Products used in Panama—acquisitions of articles, materials or supplies that are mined, produced, or manufactured in Panama when acquired by, and for use of, U.S. Forces in Panama.
- (v) Services. Services which do not primarily involve the acquisition of equipment or supplies.
- (vi) Certain Food Items—acquisition of bananas, tea, coffee, spices, herbs, sugar, cocoa, cream of tartar, tapioca, and coconut.

(vii) Miscellaneous--acquisition of the requirements listed below, Provided, they do not duplicate or replace an existing organic service capability:

(A) all items on the list at 6-105;

(B) utilities, including gas, water, electricity, steam, sewage, refuse collection and disposal;

(C) maintenance and repair of, and acquisition of spare parts for, foreign-manufactured vehicles, equipment, machinery and system; Provided, in the case of parts, That this exception applies only if the acquisition must be restricted to the original manufacturer or his supplier in accordance with 1-313;

(D) industrial gases;

(E) brand drugs specified by the Defense Medical Materiel Board;

(F) the following bulk construction materials: sand, gravel and other soil materials, stone, concrete masonry units; and fired brick;

(G) overhaul and repair of vessels, aircraft, and vehicles which are home-ported/stationed/deployed overseas and which, because of their operating commitments, cannot return to the United States or to U.S.-operated repair facilities;

(H) ice (wet or dry);

(I) books, pamphlets, newspapers, magazines, periodicals, and printed briefs and films not printed in the United States and for which there are no substitutes of U.S. origin which are intended for use in the Department of Defense Overseas Dependents' Schools; and

(J) ready-mixed asphalt and portland cement concrete Provided, That foreign cost is estimated not to exceed $10,000.

(viii) Excess and Near-Excess Foreign Currencies--acquisitions made with excess or near-excess foreign currencies when acquisition costs are in accordance with 6-1106.

(ix) Commissary Resale--purchases of subsistence items of foreign origin which are intended for resale in overseas commissary stores.

(x) Nonavailability in the United States--acquisitions as to which it is determined in advance by the individuals designated in (b) below that (A) the requirements can only be filled by foreign end products because U.S. end products are not available per se, or are not available within the time required to meet urgent military requirements directly related to maintaining combat capability, the health and safety of DoD personnel, or to protect property, and (B) that it is not feasible to forego filling the requirements or to provide a U.S. substitute for it. This authority is not intended for use in making repetitive supply acquisitions or acquisitions of total annual supply requirements of items available in the United States but not available within the time required (for coordinated acquisition specifying a foreign end product, see 5-1106.3(b)).

(xi) Unreasonable Cost--acquisitions, other than those covered in (i) through (x) above where United States end products or services are available and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost, if so determined in advance by the individuals designated in (b) below.

(b) The individuals listed below, and the immediate deputies of those listed in (1) below, are designated to make the determinations required by (a)(iii), (x) and (xi) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to other individuals specifically designated for this purpose for acquisitions estimated not to exceed $500,000:

Department of the Army--
  Director for Requirements and Acquisition,
    U.S. Army Materiel Development and Readiness
    Command;
  Commander in Chief, U.S. Army, Europe; and
    DCSLOG, U.S. Army, Europe;
  Commander, Eighth U.S. Army;
    Chief of Staff, Eighth U.S. Army;
  Chief, U.S. Army Security Agency;
  Commander, Corps of Engineers Command;
  Commander, U.S. Army, Japan;
Department of the Navy--
  Commander-in-Chief, U.S. Naval Forces, Europe;
  Commander, U.S. Naval Forces, Japan;
  Commander, U.S. Naval Forces, Philippines;
  Chief of Naval Material;
  Commander in Chief, U.S. Atlantic Fleet;
  Commander, Naval Logistics Command, Pacific Fleet;
  Commander, Military Sealift Command (MSC);
  Commandant, U.S. Marine Corps;
  Commander, Naval Facilities Engineering Command;
  Commanding General, III Marine Amphibious Force;
Department of the Air Force--
  Commander, U.S. Air Forces in Europe;
  Commander, Pacific Air Force;
  Commander, Military Airlift Command (MAC);
  Commander, Air Force Logistics Command;
  Commander, Air Force Systems Command;
  Commander, Strategic Air Command;
  Commander, Tactical Air Command;
  Commander, Air Force Communications Service;
Defense Logistics Agency--Executive Director, Contracting;
Defense Communications Agency--Director.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned.

(c) Acquisition of scientific and technical knowledge resulting in expenditures outside the United States and Canada shall be made only in the following cases:

(i) those set forth in (a)(i), (ii) and (viii) above;

(ii) when it is determined in advance, by the individuals designated in (d) below, that the requirement can only be filled by foreign end products or services and that it is not feasible to forego filling the requirement or to provide a U.S. substitute for it; and

(iii) acquisitions other than those covered in (i) and (ii) above when U.S. end products or services are available, and the difference between the domestic cost and the foreign cost exceeds 50 percent of the foreign cost as determined by the individuals designated in (d) below.

Whenever practicable, such acquisitions shall be made on a cost-sharing basis or other arrangement designed to limit any adverse effect on the balance of payments. Policy questions concerning such arrangements should be directed to the Under Secretary of Defense for Research and Engineering.

(d) The individuals listed below (and the immediate deputies of those listed in (1) below) are designated to make the determinations required by (c)(ii) and (c)(iii) above.

(1) For acquisitions estimated not to exceed $2 million in foreign cost, except that this authority may be redelegated to individuals specifically designated for this purpose for acquisitions estimated not to exceed $100,000:

Department of the Army--
    Commanding General, Army Materiel Development and Readiness Command;
    Commander, Corps of Engineers Command;
    Surgeon General, Army Medical Corps;
    Chief of Research, Development and Acquisition;
Department of the Navy--
    Chief of Naval Research;
    Commander, Naval Air Systems Command;
    Commander, Naval Electronics Systems Command;
    Commander, Naval Sea Systems Command;
    Chief, Bureau of Medicine and Surgery;
    Commander, Naval Supply Systems Command;
    Chief of Naval Development;
    Oceanographer of the Navy;
    Commander, Naval Facilities Engineering Command;
    Military Sea Lift Command;
    DC/S Installations and Logistics Department, Headquarters U.S. Marine Corps
Department of the Air Force--
    Commander, Air Force Systems Command;
    Commander, Air Force Logistics Command;

Defense Agencies--
    Director, Advance Research Projects Agency;
    Director, Defense Nuclear Agency;
    Director, Defense Communications Agency;
    Director, Defense Intelligence Agency.

(2) For acquisitions estimated to exceed $2 million in foreign cost--Secretary of the Department concerned, or the Under Secretary of Defense for Research and Engineering in the case of agencies set forth in (d)(1).

(e) Complete documentation justifying acquisitions under (a) and (c) above shall be prepared except for acquisitions made pursuant to (a)(ii) and (a)(vi). Such documentation shall be prepared by requiring activities, furnished in requests for determination submitted to the individuals listed in (b) and (d) above, and included in the contract file.

6-804 Identification of Expenditures in the United States. DoD balance of payment reporting instructions require the reporting of the amount of acquisitions of U.S. end products and services accomplished under these regulations. The following provisions are designed to facilitate such reporting by cognizant accounting and disbursing officers. It is essential in implementing these provisions that there be appropriate liaison between acquisition and accounting and disbursing personnel at each contracting activity.

(a) Except as provided in (b) below, the clause 7-104.58(a) shall be included in each contract of $10,000 that--

- (i) requires the contractor to furnish U.S. end products except that the clause in 7-104.58(a) is not required if the contractor is a domestic concern and the Government will take title to the supplies to be furnished within the United States; or
- (ii) in the case of a contract for construction, repair, or maintenance of real property, or for services, to be performed outside the United States, either--
  - (A) requires the contractor to acquire specified materials, equipment, or services from U.S. sources (whether or not the contractor is a domestic concern), or
  - (B) is with a contractor who is a domestic concern (whether or not specified items must be acquired from U.S. sources).

(b) In lieu of the clause specified in 7-104.58(a), the statement in 7-104.58(b) may be placed prominently on the face of each contract, purchase, or delivery order involving acquisitions of U.S. end products or services where the contracting officer considers that greater accuracy will be achieved or that inclusion of the contract clause is impracticable.

(c) To provide appropriate reporting of the balance of payments consequences of Defense acquisition for contracts of less than $10,000, the statement in 7-104.58(c) will be placed prominently on the face of each contract.

Part 9--International Agreements and Coordination

6-901 Scope of Part. This Part concerns the applicability of international agreements other than those in Parts 13 through 15 and coordination with overseas commands and activities in purchasing from foreign sources.

6-902 International Agreements.

(a) Various treaties and international agreements in effect between the United States and foreign governments, especially those with governments receiving military and economic aid under the Foreign Assistance Act of 1961, affect acquisition in foreign countries. Particular attention should be given to the provisions in these agreements which pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters relating to acquisition.

(b) Copies of international agreements are filed with the United States European Command (APO 128, New York) covering existing agreements in the United Kingdom of Great Britain and Northern Ireland, Western European countries, North Africa, and in the Middle East. Agreements with countries in the Pacific and Far East are filed with the United States Pacific Command (CINCPAC). Many of the agreements are compiled in the "United States Treaties and Other International Agreements" series (TIAS), which is published by the Department of State. Copies of this publication are normally available in overseas legal offices and U.S. diplomatic missions. In addition, Military Assistance Advisory Groups, Naval Missions, and Joint United States Military Aid Groups normally have copies of the agreements applicable to the countries concerned.

(c) In placing contracts with contractors outside the United States for performance outside the United States, contracting officers, including those in the United States, shall ascertain the existence and applicability of any international agreements and, subject to the provisions of 1-109.4, shall comply with such agreements.

6-903 Coordination With Overseas Commands and Activities. When it has been determined that an acquisition will be made from a foreign contractor, overseas contracting offices shall be utilized to the maximum practical extent. Contracting offices not within the command jurisdiction of a unified or specified command, anticipating placement of contracts with foreign contractors, shall maintain liaison with the appropriate component commander during preaward negotiations and postaward administration. Where an acquisition may result in a requirement for logistical support of contractor employees or additional Government employees in an overseas location, the contracting officer shall insure that the contract file includes documentation reflecting specific advance approval for such commitment from the appropriate component commander.

FOREIGN ACQUISITIONS

Part 10--Exclusion of Examination of Records Clause

6-1000 Scope of Part. This Part sets forth policies and procedures for exempting the requirement for the Examination of Records by Comptroller General clause in contracts with foreign contractors and foreign subcontractors.

6-1001 Statutory Requirements.

(a) In accordance with 10 U.S.C. 2313(c), the Examination of Records by Comptroller General clause may be excluded from negotiated contracts and subcontracts with foreign contractors and foreign subcontractors where:

- (i) the Secretary determines, with the concurrence of the Comptroller General or his designee, that inclusion of the clause would not be in the public interest; or
- (ii) when
  - (A) the contractor or subcontractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its books, documents, papers, or records available for examination, and
  - (B) the Secretary determines, after taking into account the price and availability of the property or services from U.S. sources, that the public interest would be best served by exclusion of the clause.

(b) A determination of the Secretary under (ii) above does not require the concurrence of the Comptroller General or his designee. However, where a determination of the Secretary under (ii)(B) is the basis for exclusion of the Examination of Records by Comptroller General clause, the statute requires that a written report be furnished to the Congress. This report, which shall explain the reasons for the determination, shall be submitted in triplicate by the Department concerned, to the Office of the Assistant Secretary of Defense (Comptroller), Attention: Director for Information Operations.

6-1002 Policy. The Examination of Records by Comptroller General clause shall be included wherever possible. Exclusion of the clause should be allowed only after the contracting officer has made all reasonable efforts to include the clause and has considered such factors as alternate sources of supply, additional cost, and time of delivery. "Foreign contractor" for purposes of this Part 10 is defined as "one that is organized or existing under the laws of a country other than the United States, its territories or possessions."

6-1003 Requests for Determinations and Findings. Request for determinations and findings for exclusion ordinarily will be initiated by the contracting officer. The report shall consist of a letter submitted through normal acquisition channels, addressed to the Secretary setting forth all the facts necessary to arrive at an appropriate determination and findings.

6-1004 Determination and Findings. The determination and findings made by the Secretary to authorize exclusion of the Examination of Records by Comptroller General clause from a contract with a foreign contractor or foreign subcontractor under 10 U.S.C. 2313(c) shall:

(i) identify the contract and its purpose, and state that it is a contract or subcontract with a foreign contractor or foreign subcontractor, or that the contractor or subcontractor is a foreign government or agency thereof;
(ii) describe the efforts that have been made to include the clause in the contract or subcontract;
(iii) state the reasons for the contractor's or subcontractor's refusal to include the clause;
(iv) describe the price and availability of the property or services from United States and other sources; and
(v) determine that it is in the public interest to exclude the clause pursuant to the provisions of 10 U.S.C. 2313(c).

Part 11--Use of U.S.-Owned Foreign Currency for Payments

6-1101 Scope of Part. This Part implements the Government's policy that U.S.-owned foreign currency be used when feasible in payment of purchases in foreign countries.

6-1102 Applicability.

(a) This Part applies to acquisitions of supplies, services, or construction for use outside the United States.

(b) This Part does not apply to acquisitions (i) funded from Special Foreign Currency Program Appropriations or (ii) made under Section VI, Part 1.

6-1103 Definitions. As used in this Part, the following terms have the meanings set forth below.

(a) U.S.-owned foreign currency means currency of a foreign country which currency is:

- (i) owned by the United States;
- (ii) determined excess or near-excess by the United States Department of the Treasury;
- (iii) available in the country of issuance to pay obligations of the United States within that country; and
- (iv) disbursed by the United States Treasury Disbursing Officer in the country concerned, either directly to the contractor or to the military disbursing officer, as appropriate.

(b) Excess foreign currency means currency that has been determined by the Department of the Treasury to be in excess of foreseeable requirements of the U.S. Government. Countries in which the United States owns excess foreign currency are listed in 6-1109(a).

(c) Near-excess foreign currency means currency that has been determined by the Department of the Treasury to be above the immediate requirements of the U.S. Government. Countries in which the United States owns near-excess foreign currency are listed in 6-1109(b).

(d) U.S. dollar content means the U.S. dollar cost to an offeror for domestic source end products or services (including costs of transportation furnished by U.S.-flag carriers) imported directly from the United States and to be used in performance of a contract, as certified by the offeror.

6-1104 Solicitation Procedure.

(a) Except as provided in (c) below, when supplies, services, or construction for use outside the United States are to be purchased, the solicitation shall contain the provision in 7-2003.62 when it can reasonably be expected that (i) contracts will be performed in whole or in part in a country in which there is U.S.-owned foreign currency, or (ii) a contractor (domestic or foreign) may be willing to accept U.S.-owned foreign currency in payment in whole or in part.

(b) Failure to state a price in U.S.-owned foreign currency, either in whole or in part, shall not in itself cause an offer to be considered nonresponsive to a solicitation.

(c) Requests for quotations for purchases described in Section III, Part 6, for delivery within a country in which there is U.S.-owned foreign currency shall be limited to be the local trade area of that country; and, to the extent feasible within the criteria in 6-1108, shall require quotations to be stated only in the U.S.-owned foreign currency of that country.

6-1105 Evaluation of Offers.

6-1105.1 Conversion for Evaluation Purposes. For purposes of evaluation, offers expressed in whole or in part in U.S.-owned foreign currency shall be converted to show their equivalency in U.S. dollars at the rate of exchange used by U.S. disbursing officers for such currency on the date set for receipt of offers.

6-1105.2 Excess Foreign Currency Offers. Subject to 6-1105.4 and to the award limitations in 6-1106, preference for acceptance of offers in excess foreign currency or in combinations of excess foreign currency and U.S. dollars shall be in the following order, even though the offer preferred may not be the lowest in price:

(i) the lowest responsive offer in whole in an excess foreign currency. If equal low offers are received and one or more contain a U.S. dollar content which is not required to be paid in U.S. dollars, that offer which contains the greatest U.S. dollar content shall be preferred.

(ii) When the only responsive offers in excess foreign currency also contain a U.S. dollar content for which payment in U.S. dollars is required and is limited to that content, that offer which results in the lowest expenditure of U.S. dollars.

(iii) When the only responsive offers in excess foreign currency also require payment in part in U.S. dollars which are not limited to the U.S. dollar content, that offer which results in the lowest expenditure of U.S. dollars. If equal low offers are received and one or more contain a U.S. dollar content and others contain no U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

(iv) When responsive offers in combinations described in (ii) and (iii) above are received, the lowest offer evaluated under (ii) above.

(v) When responsive offers are received in U.S. dollars only, the lowest such offer. If equal low offers are received and one or more contain a U.S. dollar content, that offer which contains the greatest U.S. dollar content shall be preferred.

6-1105.3 Near-Excess Foreign Currency Offers. The lowest responsive offer in whole or in part in a near-excess foreign currency which does not exceed the lowest responsive offer in U.S. dollars shall be preferred over the U.S. dollar offer. Offers in excess foreign currency shall always be preferred over offers in near-excess foreign currency.

6-1105.4 Consideration of Combination Offers. When responsive offers received include some which are priced only in U.S. dollars and others in combinations of U.S. dollars and excess or near-excess foreign currency, a combination offer shall not be considered for award if the U.S. dollar amount of that offer exceeds the dollar amount of the lowest responsive offer in U.S. dollars only.

6-1105.5 Evaluation Table. The following table illustrates the evaluation of offers received in whole in excess foreign currency, in combinations of excess foreign currency and U.S. dollars, and in U.S. dollars only.

EVALUATION TABLE

Offers received are priced in U.S. dollars and "X" Country's rupees. Applicable exchange rate assumed for this table is 3 rupees equal 1 dollar.

Offers	In excess currency only	In combination excess currency— U.S. $	In U.S. dollars only	In U.S. dollars as converted (See 6-1105.1)	U.S. dollars content	Preference	
						For award	See foo not
1	360R			$120	0	1	3
2		60R + $80		($20 + $80) $100	0	6	4
3		18R + $95		($ 6 + $95) $101	0	None	4
4		60R + $90		($20 + $90) $110	0	7	4
5			$94	$ 94	0	9	5
6	450R			$150	$50	2	3
7		60R + $90		($20 + $90) $110	$90	4	4
8			$94	$ 94	$50	8	5
9	450R			$150	0	3	3
10		60R + $80		($20 + $80) $100	$50	5	4

NOTES TO EVALUATION TABLE

1. All offers are assumed to be responsive.

2. The lowest offer in U.S. dollars only is $94. Therefore, $141 ($94.00 plus $47) is the maximum amount for which the contracting officer has authority to award without referral under 6-1106.2.

3. Offers 1, 6, and 9 are entirely in excess foreign currency and are given first consideration. Offer 1, being the lowest, is preferred for award. In the absence of Offer 1, Offer 6 would be preferred because it contains a U.S. dollar content of $50. In the absence of Offers 1 and 6, Offer 9 would be preferred. In accepting Offer 1, 6, or 9, the DoD Appropriation would be charged $94 (see 6-1106.1). Before Offer 6 or 9 could be accepted, they would require referral under 6-1106.2.

4. Offers 2, 3, 4, 7, and 10 are combination offers and would be given consideration in the absence of Offers 1, 6, and 9 or in the absence of Offer 1 and in case Offers 6 and 9 were not approved by higher authority

after referral under 6-1106.2. Offer 7 would be preferred over Offers 2, 3, 4, and 10 because it contains a U.S. dollar content and the part to be paid in U.S. dollars is limited to that content. In the absence of Offer 7, Offer 10 would be preferred over Offers 2, 3, and 4 because it contains a U.S. dollar content of $50, and, although the part to be paid in U.S. dollars is more than that content, it would result in the least expenditure of U.S. dollars. In the absence of Offers 7 and 10, Offer 2 would be preferred over Offers 3 and 4 because it would result in the least expenditure of United States dollars. In the absence of Offers 2, 7, and 10, Offer 4 would be preferred. Offer 3 could not be considered for award because the U.S. dollar amount ($95) exceeds the lowest offer in U.S. dollars ($94)(see 6-1105.4).

5. Offers 5 and 8 are entirely in U.S. dollars and would be given consideration in the absence of all other offers or in the absence of all other offers except 6 and 9 and in case those offers were not approved by higher authority after referral under 6-1106.2. Offer 8 would be preferred to Offer 5 because it contains a U.S. dollar content of $50.

6-1106 Awards.

6-1106.1 Basis. Award shall be made in accordance with 6-1106.2 and 6-1106.3. When unreasonable overpricing in relation to the U.S. dollar cost or the normal local foreign currency cost to non-DoD users of the same or similar items exists, the proposed acquisition shall be referred to higher authority. |

6-1106.2 Awards by the Contracting Officer. The contracting officer shall have authority to award contracts as follows:

(i) to the offeror submitting the lowest responsive offer in whole or in part in excess foreign currency when that offer does not exceed the lowest responsive offer in U.S. dollars by more than 50 percent and the lowest responsive offer in U.S. dollars does not exceed $50,000; (Note: The cost to the DoD appropriation shall be the lowest responsive offer in U.S. dollars. The additional cost will be assumed by the Department of the Treasury.)

(ii) to the offeror submitting the lowest responsive offer in whole or in part in near-excess foreign currency, when that offer does not exceed the lowest responsive offer in U.S. dollars;

(iii) to the offeror submitting the lowest responsive offer entirely in U.S. dollars, Provided, That payment in U.S. dollars is authorized under 6-1108. (Where a foreign purchase is contemplated under 6-805.2(a)(ix) and is not otherwise excepted, and where payment is to be made in U.S. dollars only, the acquisition shall be made in accordance with 6-806.1.)

6-1106.3 Awards Requiring Approval by Higher Authority.

(a) The contracting officer shall refer the proposed acquisition to the appropriate official listed in (c) below when: |

(i) the lowest responsive offer in excess foreign currency exceeds the lowest responsive U.S. dollar offer by more than

50 percent regardless of the U.S. dollar cost of the contract;
(ii) the lowest responsive U.S. dollar offer exceeds $50,000; or
(iii) the lowest responsive offer in near-excess foreign currency exceeds the lowest responsive offer in U.S. dollars.

(b) The contracting officer shall refer the case expeditiously describing, as a minimum, the acquisition involved; the number of offers received in each currency category; the lowest responsive offer in U.S. dollars; the date or dates the offers will expire; and recommending the offer, if any, that should be accepted.

(c) The Secretaries of the Military Departments, the Under Secretary of Defense for Research and Engineering, the Directors of Defense Agencies, and the Assistant Secretary of Defense (Comptroller), or their designees, shall determine whether a proposed acquisition described in (a) above shall be made payable in U.S.-owned foreign currency or in U.S. dollars.

6-1107 Determinations of Nonfeasibility and Contract Certifications.

(a) At the time of award, the contracting officer shall determine whether payment in U.S.-owned foreign currency is feasible.

(b) When the contracting officer determines that it is not feasible under one of the criteria in 6-1108 to use U.S.-owned foreign currency for payment of a contract, he shall execute a Contract Certification in the following format.

CONTRACT CERTIFICATION

I hereby certify that it is not feasible to make payment under this contract in the country of ____________ in the amount of $______ from U.S.-owned foreign currency for the reason stated. (Cite the applicable criterion.)

(Signature)________________________
(Typed Name and Title of
Contracting Officer
__________ __________ __________)

(c) When U.S.-owned foreign currency and U.S. dollars are combined for payment of a contract, the dollar amount shown in the Contract Certification shall be that amount which is to be paid in U.S. dollars.

(d) The original and one copy of each Contract Certification shall be furnished to the disbursing officer designated to make payments under the contract; and one signed copy shall be filed with the contract. Other distribution may be made in accordance with departmental instructions.

6-1108 Criteria for Nonfeasibility Determinations. The following criteria shall be used in determining that payment of contracts in whole or in part in U.S.-owned foreign currency is not feasible:

(i) The Department of the Treasury is not holding excess or near-excess foreign currency in the country concerned.
(ii) The contract is to be awarded in a foreign country where there is U.S.-owned foreign currency but where a treaty,

executive agreement, or law of the country concerned requires payments to be made in U.S. dollars.

(iii) Responsive offers require payment in U.S. dollars in whole or in part.

(iv) The only responsive offers received require payment entirely in U.S. dollars.

(v) The acquisition is for a compelling need and of such urgency that serious injury to the U.S. Government would likely be incurred if payment in excess or near-excess foreign currency were to be insisted upon.

(vi) Offers in excess or near-excess foreign currency were unreasonably overpriced in relation to the U.S. dollar cost or the normal local foreign currency cost to non-Department of Defense users of the same or similar items or services and payment in United States dollars has been authorized by the proper authority under 6-1106.3(c).

6-1109 Excess and Near-Excess Currency Countries.

(a) The Department of the Treasury holds excess foreign currency in the following countries.

Country	Currency
Burma	Kyat
Egypt	Pound
Guinea	Franc
India	Rupee
Pakistan	Rupee

(b) The Department of the Treasury holds near-excess foreign currency in the following countries.

Country	Currency
Morocco	Dirham
Poland	Zloty
Taiwan	Taiwan Dollar
Tunisia	Dinar
Yugoslavia	Dinar

(c) Changes in the currency position of the countries in which excess and near-excess foreign currency is held are disseminated periodically by the Departments to their disbursing officers.

6-1110 Contracts With Domestic Concerns. The clause in 7-104.66 shall be included in any contract with a domestic concern (see 6-001.7(a)) when the contracting officer anticipates the contract will be performed in any U.S.-owned foreign currency country.

Part 12--Use of Local Currency in Payment of Foreign Contracts

6-1200 Policy. Consistent with 6-1101, it is the policy of the Department of Defense to price and pay contracts with foreign contractors in a manner that is fair to both parties and will not provide a windfall to either party. Generally, this means that offshore contracts with local firms will be priced and paid in local currency unless (i) there exists a Status of Forces Agreement providing for payment in U.S. currency or (ii) the use of local currency is determined to be inequitable, and the use of U.S. currency is authorized at a level above the contracting officer. An example of a situation where pricing and paying in dollars may be appropriate or necessary would be a contract requiring significant purchases in the United States. Exchange rate fluctuations in favor of the local currency, i.e., where the local currency appreciates in value in relation to the dollar, may result in violation of the Anti-Deficiency Act. To avoid this possibility, contracting officers should comply with established Departmental procedures to insure the availability of adequate dollar appropriations to cover any purchases of currency needed from time to time to make payments against the contract price even though the value of the currency should appreciate vis-a-vis the dollar.

Part 13--Acquisitions For Foreign Military Sales

6-1300 Scope of Part. This Part sets forth policies and procedures applicable to acquisitions made for the purpose of Foreign Military Sales (FMS) pursuant to the Arms Export Control Act. It does not apply to Foreign Military Sales made from inventories or stocks, to acquisitions for replenishment of inventories or stocks, or acquisitions made under DoD Cooperative Logistic Supply Support Arrangements. An FMS Agreement is an accepted Letter of Offer and Acceptance which is the document by which the U.S. Government agrees to sell defense articles and services to a foreign government or international organization.

6-1301 Applicable Statutory Provisions.

6-1301.1 Contract Authorization.

(a) Pursuant to Section 22 of the Arms Export Control Act (Public Law 90-629, as amended) the Department of Defense is authorized to enter into contracts for purposes of resale to foreign countries or international organizations.

(b) The Act provides in part that:

(1) The President may, without requirement for charge to any appropriation or contract authorization otherwise provided, enter into contracts for the acquisition of defense articles or defense services for sale for U.S. dollars to any foreign country or international organization if such country or international organization provides the U.S. Government with a dependable undertaking (i) to pay the full amount of such contract which will assure the U.S. Government against any loss on the contract, and (ii) to make funds available in such amounts and at such times as may be required to meet the payments required by the contract and any damages and costs that may accrue from the cancellation of such contract, in advance of the time such payments, damages, or costs are due. Interest shall be charged on any net amount by which any such country or international organization is in arrears under all of its outstanding unliquidated dependable undertakings, considered collectively. The rate of interest charged shall be a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding short-term obligations of the United States as of the last day of the month preceding the net arrearage and shall be computed from the date of net arrearage.

(2) The President may, if he determines it to be in the national interest, issue letters of offer under Section 22 of the Arms Export Control Act, as amended, which provide for billing upon delivery of the defense article or rendering of the defense service and for payment within 120 days after the date of billing. This authority may be exercised, however, only if the President also determines that the emergency requirements of the purchaser for acquisition of such defense articles and services exceed the ready availability to the purchaser of funds sufficient to make payments on a dependable undertaking basis and submits both determinations to the Congress together with a special emergency request for authorization and appropriation of additional funds to finance such purchases under this Act.

6-1301.2 Commercial Availability. Section 38(b)(3) of the Arms Export Control Act (22 USC 2778(b)(3)) prescribes that: "No license may be issued under this Act for the export of any major defense equipment sold under a contract in the amount of $35,000,000 or more to any foreign country which is not a member of the North Atlantic Treaty Organization, Australia, Japan or New Zealand unless such major defense equipment was sold under this Act." DoD policies and procedures with respect to commercial availability are contained in the Military Assistance and Sales Manual (DoD Manual 5105.38-M), Part III, Chapter H, entitled Commercial Availability, published by the Defense Security Assistance Agency. (See DoD Manual 5105.38-M.)

6-1302 Applicability. The Defense Acquisition Regulation shall apply to all purchases and contracts made by the Department of Defense in support of Foreign Military Sales (see 1-102).

6-1303 Preparation of DoD Offer and Acceptance, DD Form 1513.

6-1303.1 DD Form 1513 lists the items and/or services, estimated costs, the terms and conditions of sale, and provides for the foreign government's signature to indicate acceptance. (See Appendix F-200.1513.)

6-1303.2 Procedures.

(a) In connection with each Foreign Military Sale expected to involve a contract in excess of $10,000 which cannot be placed on the basis of price competition (as, for example, when the foreign customer has designated only one source as acceptable), before the Department of Defense furnishes prices for information purposes to potential foreign customers, prices, delivery and other relevant information shall be requested from the prospective source and such request shall state that it is for information for the purpose of a potential Foreign Military Sale and shall identify the customer.

(b) As a general rule on FMS programs requiring new acquisitions, the Contracting Officer should participate in the preparation of Price and Availability Data to support the tendering of the DoD Offer and Acceptance (DD Form 1513) by the U.S. Government to foreign countries and international organizations. In addition to the identification and review of sales commissions and fees (see 6-1305), the contracting officer shall request contractors to identify in advance of the DoD Offer and Acceptance any unusual provisions or deviations, particularly those proposed for the contract which could affect the prices quoted. Such unusual contractual requirements shall also be identified in the submittal of the price and availability data to the Departmental activity responsible for providing the DoD Offer and Acceptance to the foreign country. If the Departmental activity expands, modifies or does not accept such requirements, the contractor shall be advised prior to the submission of the offer to the foreign country.

6-1304 Pricing Acquisitions for Foreign Military Sales.

6-1304.1 General. When the Department of Defense undertakes purchasing for sale to a foreign country which has committed itself to bear the cost of the acquisition, the Department of Defense assumes responsibility to see to it that no more than a fair price is paid for the acquisition. Accordingly, FMS contracts shall be priced on the same principles and with the same care as are used in pricing normal defense contracts. This does not mean that prices of normal defense contracts for an item are automatically applicable to FMS contracts for the same item. On the contrary, application to FMS contracts of the pricing principles established by Section III, Part 8, and Section XV may require pricing results that differ from normal defense contract prices for the same item because certain kinds of costs may reasonably and allocably arise in different amounts for the former than for the latter. In this regard, known FMS requirements shall be separately identified in solicitations. (See 2-201(a) Section L, and 3-501(b) Section L).

6-1304.2 Commercial Sales to Foreign Customers. If the contractor has made sales of an item to foreign customers under comparable conditions including quantity and delivery, the pricing of FMS contracts shall be in accordance with 3-800.

6-1304.3 Cost of Doing Business With a Foreign Government or an International Organization.

(a) In pricing FMS contracts, where non-U.S. Government prices as described in 6-1304.2 do not exist, recognition should be given to costs of doing business with a foreign government or international organization (even though the form of the transaction is a defense purchase for the purpose of FMS) whenever comparable costs of doing business with the United States would be recognized in pricing normal defense contracts. Thus, recognition should be given to reasonable and allocable costs even though such costs might not be recognized in the same amounts in pricing normal defense contracts. Examples of such costs include, but are not limited to, the following:

- (i) Selling Expenses (not otherwise limited by 15-205.37(c)); e.g.:
  - (A) maintaining international sales and service organizations;
  - (B) sales commissions and fees in accordance with 1-505.4 and 6-1305;
  - (C) sales promotions, demonstrations, and related travel for the purposes of sales to foreign governments; however, such costs shall not be recovered against U.S. Government contracts for U.S. Government requirements. These expenses may be recovered provided that when required by paragraph 123.16 of the International Traffic in Arms Regulations (ITAR)(22 CFR Part 121), such promotion or demonstration has received U.S. Government approval.
  - (D) configuration studies and related technical services undertaken as a direct selling effort to a foreign country.
- (ii) Product Support and Postdelivery Service Expenses; e.g.:
  - (A) operations or maintenance training, training or tactics films, manuals, or other related data;
  - (B) technical field services provided in a foreign country related to accident investigations, weapon system problems, operations/tactics enhancement, and related travel to foreign countries.
- (iii) Costs associated with the implementation of DoD offset arrangements.

(iv) Costs that are the subject of advance understanding, in accordance with the provisions of 15-107, 15-205.3 or 15-205.35, where the advance understanding places a limit on the amounts of cost that will be recognized allowable in defense contract pricing and the understanding contemplated that it will apply only to DoD contracts for the U.S. Government's own requirements (as distinguished from contracts for FMS).

(b) Costs that are not allowable under Section XV (e.g., entertainment costs) are not allowable in pricing FMS contracts. (See also 15-205.37.)

(c) The provisions of Section 203, Public Law 91-441, do not apply to contracts for Foreign Military Sales. Therefore, the ceiling limitations or the formula constraints on bid and proposal (B&P) costs incorporated in 15-205.3(d)(2)(A) and (B), and on Independent Research and Development (IR&D) costs incorporated in 15-205.35(d)(1) and (2) shall not be applicable to contracts for Foreign Military Sales. IR&D and B&P costs allowed on contracts for Foreign Military Sales shall be limited to their allocable share of the total expenditures. In pricing contracts for Foreign Military Sales, the best estimate of reasonable costs shall be used in forward pricing. Actual expenditures, to the extent that they are reasonable, shall be used in determining final cost.

(d) Pursuant to Section 21(e)(1)(A) of the Arms Export Control Act, as amended, the United States shall make appropriate charges for administrative services in order to recover the estimated cost of administration of sales made under the Arms Export Control Act.

6-1304.4 Government-to-Government Agreements. In the event a government-to-government agreement between the United States and a foreign government, for the sale, coproduction, or cooperative logistic support of a specifically defined weapon system, major end item or support item, contains language in conflict with the provisions of 6-1304.1 through 6-1304.3 above, the language of the government-to-government agreement shall prevail.

6-1305 Sales Commissions and Contingent Fees on Foreign Military Sales.

6-1305.1 Scope of This Paragraph. This paragraph 6-1305 provides policies and procedures for determining the applicability and allowability of sales commissions and contingent fees on FMS purchases. It supplements the policies contained in 6-1304.3(a)(i), 15-205.37(c) and Section I, Part 5.

6-1305.2 Policy. Sales commissions and contingent fees are allowable under defense contracts provided that, in accordance with 15-205.37(c) and 1-505, the commissions or fees are paid to a bona fide employee or a bona fide established commercial or selling agency maintained by the prospective contractor (hereinafter referred to as contractor) for the purpose of securing business. For FMS, it is extremely difficult for the Department of Defense to verify the services rendered or the value of services by bona fide employees or bona fide established commercial or selling agencies. Therefore, it is the policy of the Department of Defense that the allowable cost of sales commissions and contingent fees (as defined in 1-505.1) anticipated to be included in

FMS contracts is limited to $50,000 (see 6-1305.4) and such fees or commission shall be made known to the purchasing government prior to or in conjunction with the submission of the DoD Offer and Acceptance (DD Form 1513) to that government.

6-1305.3 DoD Offer and Acceptance Procedures.

(a) In submitting an Offer and Acceptance to a foreign government which is known to contain a sales commission or fee, the Department of Defense will include:

- (i) the name and address of the sales representative;
- (ii) the estimate of the proposed fee, along with a statement as to the percentage of sale involved if such fee is based on a percentage of the sale price; and
- (iii) a statement indicating one of the following, whichever is applicable:
    - (A) appropriate officials within the U.S. Department of Defense consider the fee to be fair and reasonable;
    - (B) in the event only a portion of the proposed fee is considered fair and reasonable, a statement to this effect together with the rationale therefor; or
    - (C) the U.S. Department of Defense cannot determine reasonableness of the proposed fee.

The notification in the Offer and Acceptance may also include the contractor's explanation of or justification for the proposed charge, together with any other data which may be requested by the purchasing government.

(b) The Offer and Acceptance also will include a statement to the effect that acceptance of the offer by the purchasing government, after receipt of the appropriate notification outlined above, will constitute that government's approval of the sales commission or fee involved. No fee shall be accepted by the Department of Defense if disapproved by the purchasing government.

(c) There may be occasions, as when FMS requirements are to be fulfilled by competitive acquisitions, when it is not possible to determine prior to presentation of the Offer and Acceptance whether or not the price to be paid for material or services will include sales commissions and fees. In such cases, the purchasing government will be notified (by DoD officials responsible for presentation of the Offer and Acceptance) as soon as possible if subsequent contract negotiations indicate that a sales representative's charges will be claimed by the contractor. This notification will include the information outlined in (a) above, along with an indication that the Department of Defense will determine whether or not to accept such costs as a valid charge to the contract unless contrary notification is received from the purchasing government within 30 days of the date of the notification.

(d) If in making the determination required by 1-505 and 6-1305.4 (c) the responsible contracting official determines that a sales representative is not bona fide for reasons other than reasonableness of fee, no Offer and Acceptance will be tendered pending withdrawal by the prospective contractor of the fee for such sales representative from his proposal.

6-1305.4 Applicability and Allowability of Sales Commissions or Fees.

(a) When a contracting officer is requested to obtain price and availability data from a contractor to support the tendering of an Offer and Acceptance, he shall require the contractor to identify the amount of any sales commissions or fees. Allowable costs for sales commissions or fees applicable to contracts for FMS shall not exceed $50,000 per contract (including all modifications and subcontracts thereto) for each foreign customer served by that contract. Although commissions and fees may be less than $50,000 per contract, all such commissions and fees must be justified and supported based on the criteria in 6-1305.4(b). If deviations to this policy are considered necessary, 1-109.3 shall apply. In addition, sales commissions or fees shall not be allowed for follow-on spares provided under DoD Cooperative Logistic Supply Support Arrangements.

(b) In order to provide the appropriate notice and advice regarding sales commissions and fees to a foreign government at the time an Offer and Acceptance is submitted, the contracting officer, except with respect to those contracts excluded in 1-506.3(i) and (ii), shall:

(i) require the contractor to submit a Contractor's Statement of Contingent or Other Fees (Standard Form 119) (including any such fees claimed by subcontractors);

(ii) determine under 1-505 whether a bona fide employee or agency relationship exists; (For the purposes of FMS, the definition in 1-504 of improper influence also extends to officials of the foreign government.)

(iii) require the contractor to submit a breakdown of the fee related to the services performed by the sales representative. Even though a bona fide employee or agency relationship is determined to exist, the basic test of reasonableness for the purposes of making the statement required by 6-1305.3(a)(iii), is an assessment of the services provided, or to be provided, compared to the amount of the fee. In addition to the fee breakdown of services, a comparative analysis may be made of the proposed fee/commission with recent payment for comparable services under commercial sales (non-FMS) of the same or similar items, and sales commissions and fees allowed on previous FMS sales of comparable scope and dollar amounts. In analyzing the fee, consideration should be given to whether the sale is the initial or follow-on sale because the effort for follow-on sales of additional quantities, spares and support equipment would not normally be as great as the effort for the initial sale.

(c) The PCO shall make a determination with respect to a bona fide employee or agency relationship and reasonableness of the commission or fee (i.e., one of the 6-1305.3(a)(iii) fee statements), subject to the approval of the chief of the contracting office.

6-1305.5 Contracting Procedures Relating to Sales, Commissions and Fees.

If, after notification by DoD officials responsible for presentation of the Offer and Acceptance to a foreign government as required by

6-1305.3, the foreign government disapproves the fee, or a portion of the fee, the contracting office shall notify the prospective contractor and request withdrawal of the fee for the sales representative from the proposal. Should the contractor refuse to withdraw the fee, the Department of Defense will notify the foreign government that the Department of Defense is unable to purchase the items or services from that contractor.

6-1305.6 Special Country Requests With Respect to Sales Commissions and Fees. Pursuant to DoD Manual 5105.38-M (Military Assistance and Sales Manual), Letters of Offer and Acceptance for requirements for the governments of Australia, Taiwan, Egypt, Greece, Iran, Israel, Japan, Jordon, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, or Venezuela (Air Force) are required to provide that all U.S. Government contracts resulting from the Letters of Offer shall prohibit the payment of sales commission and fee unless such payments have been identified and payment thereof approved in writing by the government involved before contract award. Therefore, the contracting officer shall insert the clause in 7-104.107 in all solicitations and contracts for FMS awarded on behalf of these purchasers unless such payment has been approved.

6-1306 Recovery of Nonrecurring Costs.

6-1306.1 Policy. It is the policy of the Department of Defense to recover a fair share of its investment in nonrecurring costs related to defense products, and/or a fair price for its contribution to the development of related technology, when such products are sold and when technology relating to the manufacture of the products is sold or licensed to a foreign government, international organization, foreign commercial firm, or domestic organization. Furthermore, in selected cases, it is DoD policy to recover, on behalf of a foreign government or international organization, a fair share of the nonrecurring costs for a special feature or product paid by the foreign government or international organization under a foreign military sales case when subsequent customers purchase the same specialized feature.

6-1306.2 Applicability.

(a) This policy applies to those products and technologies for which investment costs equal or exceed $5 million for any of the following:

- (i) Nonrecurring research, development, test, and evaluation (RDT&E) costs to develop defense products and related technology. The determination of RDT&E costs shall be based upon the current and predecessor models of an item or equipment.
- (ii) Nonrecurring production costs.
- (iii) RDT&E and nonrecurring production costs for special features under a foreign military sale, when requested by the FMS customer and agreed to by the U.S. Government.

(b) In the event an end item contains one or more components which individually meet the above thresholds, recoupment will be made on a component when sold separately.

(c) In the case of product sales, if the dollar threshold is met for either nonrecurring RDT&E or production costs, recoupment for both categories of investment costs will be charged.

6-1306.3 Procedures. Charges shall be computed and assessed by the DoD officials responsible for presentation of the DD Form 1513. Such charges shall not be included in the contractor's proposed price.

6-1307 Source Selection.

(a) Purchases for FMS customers shall be implemented under normal acquisition and contract management procedures set forth in DAR and other directives. However, the FMS customer may request that a defense article or defense service be obtained from a particular prime source. In such cases, 3-210.2(xviii) provides authority to negotiate on a sole source basis. The FMS customer may also request that a sole source subcontract be placed with a particular firm. The contracting officer shall honor requests for sole source prime and subcontracts from the FMS customer as specified in the Letter of Agreement or other written direction by the military sales organization.

(b) Representatives of the FMS customer shall not be permitted to direct the deletion of names of firms from bidders mailing lists or slates of proposed A/E firms. They may, however, suggest that certain firms be included. Contracting offices shall not accept directions from the FMS customer as to source selection decisions or contract terms (other than the special contract provisions and warranties referred to in Condition A.2. of the DD Form 1513), nor shall the FMS customer be permitted to interfere with a prime contractor's placement of his subcontracts. Requests by the FMS customer for rejection of any bid or proposal shall not be honored unless the rejection is justified on the basis of reasons which would be sufficient in the case of a purchase by the Department of Defense to meet its own needs.

6-1308 Limitation of Liability. In acquisitions for FMS, the foreign purchaser shall be advised that the appropriate Limitation of Liability clause(s) (see 1-330) is included in the FMS contract (see Condition C on the DD Form 1513). If the foreign customer does not agree to assume the risk for loss or damage as provided in the clause(s) and objects to the inclusion of such clause(s) in the Offer and Acceptance, the contractor shall be so advised. The costs of necessary insurance, if any, to be obtained by the contractor to cover such risk of loss or damage shall be considered in establishing the FMS contract price of such items.

6-1309 Exercise of Options for Foreign Military Sales. The contract shall contain appropriate notice and recognition of the Government's right to exercise the option on behalf of a foreign country (see 1-1503(e), 1-1505(c)(ii), and 7-104.27(d)).

6-1310 Implementation of Offset Arrangements Negotiated Pursuant to Foreign Military Sales Agreements.

6-1310.1 Scope of Paragraph. This paragraph 6-1310 sets forth policies and procedures concerned with the fulfillment of Department of Defense offset arrangements negotiated pursuant to an FMS agreement. An "FMS/offset arrangement" is that which is negotiated pursuant to an FMS agreement wherein the Department of Defense agrees to place, on a contractural basis and consistent with the guidance in 6-1310.2(b), a certain percentage of the FMS agreement dollar value or a stated dollar objective in that country with which the FMS agreement has been negotiated. The purpose of an FMS/offset arrangement is to fulfill commitments negotiated pursuant to an FMS agreement. Australia, Belgium, Denmark, Netherlands, Norway, and Switzerland have FMS/offset arrangements negotiated pursuant to FMS agreements. However, Belgium, Denmark, Netherlands, and Norway are also participating NATO countries and are accorded preferences under Part 14.

6-1310.2 General.

(a) Since May 4, 1978, it has been DoD policy not to enter into government-to-government offset agreements because of the inherent difficulties in negotiating and implementing such arrangements. Exceptions to this policy must be approved by the Secretary of Defense or his Deputy and will only be made when there is no feasible alternative to ensure the successful completion of FMS transactions considered to be of significant importance to the national security interests of the United States.

(b) Where authorized, offset provisions typically require the Military Departments or U.S. prime contractors, or both, to identify items for which foreign sources may obtain contracts up to a specified offset level and in accordance with the terms and conditions of the particular DoD offset agreement. Normally FMS/offset arrangements should be negotiated prior to the FMS agreement Offer and Acceptance in order that the Department of Defense and its prime contractors will have an opportunity to assess in advance the DoD's or contractor's ability to fulfill the FMS/offset arrangement, and include in the offer those DoD and contractor costs associated with such arrangements.

(c) If an exception is granted pursuant to paragraph (a) above, the policy of the Department of Defense is that the domestic concerns involved in the FMS and the foreign customer will make suitable arrangements to fulfill an FMS/offset arrangement. Only if it is determined that the FMS/offset arrangement cannot be fulfilled in this fashion will the Department of Defense seek to fulfill the offset commitments through other defense purchases. When practical, the U.S. prime contractor shall be contacted and coordination obtained prior to the Government committing the U.S. prime contractor's participation.

(d) The Defense Security Assistance Agency (DSAA) acts as the focal point within the Executive Branch for interagency coordination on offset policy in consultation with the Office of the Assistance Secretary of Defense (International Security Affairs), from which DSAA derives overall policy guidance. The Office of the Under Secretary of Defense for Research and Engineering (OUSDRE) is responsible for matters pertaining to the fulfillment of the offset portion of FMS agreements. General informaton regarding the existence of FMS/offset arrangements with particular countries or implementation of such arrangements may be obtained by submitting inquiries through the Departments to the Director for International Acquisition, OUSDRE(AP).

6-1310.3 Procedures.

(a) Whenever an FMS agreement involves a single major weapon system, the Department responsible for acquisition of the weapon system will be responsible for managing any resulting FMS/offset arrangement. If an FMS agreement involves the sale of items from two or more Departments, OUSDRE may either direct that one Department be responsible for coordinating the implementation of the FMS/offset arrangement, or apportion responsibility for managing the offset program among two or more Departments. Such management includes (i) the development of special contractual provisions consistent with (d) below, (ii) the consideration of other DoD contract items for competition by foreign sources (to the extent other defense purchasing is involved or becomes necessary), and (iii) the obtaining of appropriate exemptions by the Secretary of the purchasing Department concerned from the Buy American Act under 6-103.3, the Balance of Payments Program, duty and other applicable acquisition restrictions on a purchase-by-purchase basis of defense equipment. (See sample Determination and Findings set forth in (b)(1) below for the exemption of the Buy American Act.) Even though a Military Department or Defense Agency is not responsible for the management of a certain FMS/offset arrangement, it will consider, for competitive acquisitions, offers of defense equipment from FMS/offset arrangement country sources.

(b) Solicitation of FMS/offset arrangement country sources shall be accomplished using procedures like those set forth in 6-1403.1(a) for participating countries. When soliciting sources outside the United States, international air mail shall be utilized where security classification permits. (See 2-202.1, 2-203.1 and 3-503.2.) For the purpose of evaluating an FMS/offset arrangement country offer, it shall be treated as if it were a participating country offer and evaluated in accordance with 6-1403.1(c). If after such evaluation, it is clear that the FMS/offset arrangement country offer is low or otherwise eligible for award, the contracting officer shall request from the Secretary of the Department concerned the appropriate exemptions for the acquisition as set forth in (b)(1) below. The list set forth at 6-1405 shall also apply to FMS/offset arrangement countries.

(1) To obtain an exemption under 6-103.3 of the Buy American Act, the contracting officer shall process a Determination and Findings for the signature of the Secretary of the Department or Agency concerned. The Determination and Findings shall be substantially as follows for end items or modified as necessary for components (see 6-001.2):

SERVICE OR AGENCY ____________________
EXEMPTION OF THE BUY AMERICAN ACT (41 U.S.C. 10a-d)
DETERMINATION AND FINDINGS

Upon the basis of the following findings and determinations which I hereby make in accordance with the provisions of DAR 6-103.3, acquisition of an ____(FMS/offset arrangement country)____ ____(describe item)____ may be made as provided below.

FINDINGS

1. The ____(Contracting Activity)____ proposes to purchase ____________, under contract number ____________, mined, produced or manufactured in ____(country of origin)____. The total estimated cost of this acquisition is ____________.

2. The United States Government (USG) and the Government of ________ have entered into an FMS/offset arrangement whereby the Government of

BEST DOCUMENT AVAILABLE

___________ will purchase US defense articles and services and the USG, through the Department of Defense (DoD) if necessary, will offer potential DoD requirements suitable for purchases of (FMS/offset arrangement country) defense items.

3. The Agreement provides that competitive offers of (FMS/offset arrangement country) end products will be evaluated by the Department of Defense without imposing any price differential under the Buy American Act or Balance of Payments Program and without taking applicable U.S. customs and duties into consideration so that (FMS/offset arrangement country) items may better compete for sales of defense equipment to the Department of Defense. In addition, the Agreement stipulates that acquisitions of (FMS/offset arrangement country) items must fully satisfy Department of Defense requirements for performance, quality, and delivery and shall cost the Department of Defense no more than would comparable U.S. source or other foreign source defense equipment eligible for award.

4. In order to achieve the above objectives, the solicitation contained the Buy American Act and Balance of Payments Program clause, (7-104.3) which states that an exemption from the application of the Buy American Act may be granted by the Secretary of the Department concerned. Offers were solicited from other sources and the offer received for an ________ (FMS/offset arrangement country end item) is found to be acceptable.

DETERMINATION

Pursuant to the Buy American Act (41 U.S.C. 10a-d), I hereby determine that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the proposed offer.

(Date) (Secretary of Department)

(c) To assure that the policy of 6-602 is carried out regarding the issuance of duty-free entry certificates, the contracting officer shall include the clause in 7-104.31(a) or 7-104.31(b), as appropriate, in contracts which either contribute, or are anticipated to contribute, to the fulfillment of an FMS/offset arrangement.

(d) The clause set forth at 7-104.105 shall be used in a contract when the domestic concern involved in the Foreign Military Sale has accepted responsibility for accomplishing any portion of an FMS/offset arrangement. (Paragraph (a) of the clause should be modified as necessary to state any special terms and conditions of the FMS/offset arrangement, such as competitive prices or otherwise, period of offset accomplishment, special type or nature of offset required, and so forth.)

(e) When an FMS/offset arrangement program is structured to provide offset potential on a number of DoD purchases, as opposed to only within the prime FMS contracts, DoD solicitations which contemplate proposals of FMS/offset arrangement country end products should indicate that the price evaluation of offers will be accomplished without the application of the Buy American Act or the Balance of Payments Program differentials or duty, which would otherwise be applied to the price evaluation in accordance with other Parts of this Section VI. If on the basis of such evaluation, an offeror proposing an end product from an FMS/offset arrangement country source is low, the matter will be forwarded to the Secretary of the Department for consideration as to whether it would be in the public interest to exempt the end product from the restrictions of the Buy American Act (see 6-103.3) and the Balance of Payments Program regulations. FMS/offset arrangement country sources, in competing for DoD purchases under a DoD FMS/offset program, must be responsive to the terms and conditions of DoD solicitations unless otherwise specifically provided for in the FMS/offset arrangement with the FMS/offset arrangement country. DoD contracting activities must also comply with all other laws and regulations governing foreign purchases, such as security restrictions and disclosure of information to foreign nationals. (See 6-1403.3.)

(f) In a general FMS/offset arrangement which contemplates foreign competition with U.S. sources for defense contracts (as opposed to one structured to be accomplished within the FMS prime contracts for that sale), the preferable procedure is to require the foreign government to propose, from time to time, specific defense-related items which appear susceptible to competition by companies in that country. When such proposals are made, the foreign government will include the names and addresses of the foreign sources which that foreign government considers qualified to perform the work. However, in order to ensure fulfillment of the FMS/offset arrangement within the specified time limits, the Departments are also expected to exercise initiative in seeking out items which might be suitable for such foreign competition and in making arrangements through the foreign government, if necessary, to identify suitable sources.

6-1311 Use of Government Production and Research Property on Work for Foreign Governments or International Organizations. See 13-406.

6-1312 Exclusionary Policies and Practices of Foreign Governments. All contracts for the purchase of goods or services for Military Assistance Programs (MAP), International Military Educational Training (IMET) and Foreign Military Sales (FMS) shall include the clause in 7-104.97.

6-1313 Nonapplicability of Rates Under 49 U.S.C. Section 10721 (Formerly "Section 22 Rates"). See 19-217.1.

6-1314 Reserved.

6-1315 FMS/Offset Arrangements Negotiated Pursuant to FMS Agreements. The following agreements are provided for information purposes only.

6-1315.1 Australian Memorandum of Discussion.

MEMORANDUM OF DISCUSSIONS

Against the purchase by the Government of Australia from the United States Department of Defense of major weapons systems and items of defense equipment, the U.S. Department of Defense agrees to establish the basis of an associated offset arrangement. The offset arrangement is pursuant to the discussions held in Washington on 10 April 1973 between the U.S. Department of Defense and the Australian Department of Defence. In these discussions the following principles and understandings were agreed:

1. The U.S. Department of Defense will commit itself to a combined U.S. industry and DoD offset objective of no more than 25% of the value of a major Australian order.

2. The U.S. Department of Defense and the Australian Department of Defence will look to those U.S. firms benefiting substantially from an Australian order to carry the initial and primary burden of offset implementation.

3. In the event that U.S. firms and subcontractors are unable to completely fulfill their offset objectives, the U.S. DoD will first offer Government Furnished Equipment (GFE) to Australian industry as bid opportunities and, second, if GFE items turn out to be unsuitable for either partner, select other items of defense equipment and supplies which appear to be competitively obtainable from Australian sources.

4. The DoD reserves the right, unilaterally, to select appropriate procurements for offset implementation. However, to facilitate the selection of suitable items, DoD will consult with A/DoD to identify areas of Australian industrial/technological strength.

5. DoD procurement from Australian sources will normally be competitive and be subject to two basic conditions: one, that the items of procurement fully satisfy DoD requirements for performance, quality, and delivery, and two, that the items of procurement cost DoD no more than would comparable U.S. items or other foreign items eligible for award.

6. If and when special circumstances invite it, the DoD may consider alternative means of procurement involving directed procurements or negotiated procurements, including items of Research and Development, to the extent appropriate items can be selected.

7. Procurements from Australian sources made under DoD implementation of offset arrangements will be in accord with the Armed Services Procurement Regulations (ASPR). Selective waiver of the Buy American Act and the DoD "Gold Flow" rule will be made by the DoD for those procurements in which Australian sources are solicited and evaluated to be the winning bid except for application of these differentials. Thus the DoD will authorize case-by-case exceptions of these differentials in consonance with the principles and understandings of this Memorandum of Discussions.

8. As a general rule, the DoD role in this offset agreement will begin at the time of an Australian Request for Quotation (RFQ). The time-frame for placement of orders in fulfillment of the DoD share of the U.S. offset objective will be within five years of the initial date of delivery of the items purchased against which the offset objective is measured.

9. Notwithstanding the DoD's willingness to facilitate and to assist the A/DoD and Australian industry in successfully accomplishing the purposes and understandings of the offset arrangement, it remains the basic Australian responsibility to carry out those actions to bring its sales to the U.S. defense industry market and to the DoD to successful consummation.

10. It is recognized that detailed implementing procedures for the management of offsets will be needed. These procedures necessarily involve both procurement and sales activities and they will be developed in subsequent meetings as mutually agreed.

Signed, ad referendum, this 10th day of April 1973 in Washington, D.C.

SUBMITTED:	Leonard A. Alne For the U.S. Department of Defense	Roy W.G. Davies For the Australian Department of Defence
APPROVED:	W.P. Clements, Jr.	L. Barnard, M.O.D.

6-1315.2 Swiss F-5 Agreement.

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE SWISS CONFEDERATION AND THE GOVERNMENT OF THE UNITED STATES CONCERNING THE F-5 PROGRAM

1. The Government of the Swiss Confederation, acting through the Federal Military Department (hereinafter called the FMD) intends to purchase a quantity of F-5E and F-5F aircraft, with associated supporting defense articles and services, from U.S. sources through the United States Department of Defense (hereinafter called the DoD) under Foreign Military Sales procedures.

2. The goal of the Memorandum of Understanding (MOU) is to offset to the maximum extent possible the amount to be paid by the Swiss Government for the aircraft and supporting equipment set out in paragraph 1 by placing contracts on a competitive basis with Swiss industries, but in no event will the goal be less than 30%.

3. The United States Government, acting through the DoD, and the Government of the Swiss Confederation, acting through the FMD, in seeking to attain this goal, will look to those U.S. firms benefiting substantially from the Swiss purchase to carry the primary burden of offset implementations. It will be the basic responsibility of industry in each country to identify and define their capabilities and to carry out the supporting action to facilitate the industrial participation envisioned herein. During the first two years the primary burden of offset implementation will be upon Northrop, General Electric and related contractors. However, if during that period Swiss industry offers items which can meet valid U.S. defense procurement on a competitive basis, the provisions of paragraph 5 will be applicable. After such two year period representatives of the parties hereto, with appropriate representatives from the industrial sectors, will meet to review progress hereunder. Should it be apparent that the offset objectives may not be reached before the expiration of the MOU, the DoD will augment industry efforts to reach that objective by offering to Swiss industry the opportunity to provide defense articles and services under competitive solicitation procedures and in accordance with paragraph 5.

4. (A) In order to achieve the goal the DoD, contingent on the sale of the above quantities of aircraft to the Government of the Swiss Confederation, agrees to use its best efforts to have Northrop, General Electric, and other companies associated with the F-5E and F aircraft program provide Swiss industry with the opportunity to compete, on an equal basis with U.S. industry and other sources for sub-contracts. In addition, the DoD will encourage the prime contractors (Northrop and GE) to implement their plans for expansion of Swiss products in the U.S. and third-country markets.

(B) Swiss items purchased by U.S. sources (including municipalities) and Swiss items purchased by third-country sources as a result of the efforts of Northrop, GE and other U.S. contractors associated with the F-5 program will be recognized in any computation of offset amounts. The primary test will be a mutual accord as to whether or not a given sale occurred as a result of efforts arising from this offset agreement. To facilitate these computations the DoD will look primarily to the contractor to keep records adequate for this purpose.

5. The DoD agrees that in seeking to attain this goal, it will:

(A) Provide for waiver of the cost of import duties in evaluating defense prime contracts and sub-contract solicitations from Swiss industry and for the necessary duty-free entry certificates and related documentation.

(B) Emphasize that in inviting submission of selected tenders, special consideration should be given to those items for which Swiss industry can bid on a competitive basis.

(C) Use its best efforts to have technical data required for production provided to Swiss contractors on a reasonable cost basis.

(D) Facilitate the necessary export licenses required for the provision of bid package and related technical data to accomplish the above.

(E) Provide for waiver to the extent permitted under "Buy National" legislation and regulations.

6. The FMD and its organizations will use their good offices and authority to achieve the established procurement objectives. This will include, in addition to the purchase of the F-5 aircraft, the following:

(A) Direction to Swiss industry on steps to be taken by Swiss industrial firms to make known their capabilities and products which might qualify for competitive procurement by U.S. industry and, to the extent necessary, by the DoD;

(B) Advice to Swiss industry on the necessary steps they must take to coordinate their efforts in responding to U.S. offers;

(C) Assistance to Swiss industry in meeting handling requirements for classified U.S. information.

7. The FMD and the DoD will appoint project officers to monitor progress toward the objective of this MOU. These project officers will meet periodically, but not less than annually, to review the progress of this understanding and recommend such action as may appear necessary to carry out its objective.

8. At the end of every two years, representatives of the parties hereto with appropriate representatives from the industrial sectors will meet to review progress under this MOU.

9. This Memorandum of Understanding is effective on the date on which it is signed, and shall remain in effect for eight years, subject to the respective laws of the Government of the Swiss Confederation and the Government of the United States.

James R. Schlesinger	Rudolf Gnaegi
The Secretary of Defense of the United States of America	The Chief of the Federal Military Department of the Swiss Confederation
2 July 1975	9 July 1975
(Date)	(Date)

6-1316 Reserved.

Part 14 - Purchases from NATO Participating Country Sources

6-1400 Scope of Part. This Part implements the Memoranda of Understanding (MOU) between the United States and participating countries. (See 6-001.)

6-1401 Policy. In order to increase the defense capabilities of NATO through more efficient cooperation in the field of research and development, production and acquisition of defense equipment, the United States has entered into Memoranda of Understanding with Canada, the Federal Republic of Germany, the Government of Italy, the United Kingdom of Great Britain and Northern Ireland (U.K.), the Government of Norway, the Kingdom of the Netherlands, the Government of Portugal, the Government of Belgium, and the Government of Denmark. The objective of each MOU is to facilitate the defense of North America and Europe so as to achieve:

(i) greater cooperation in research, development, acquisition and production;
(ii) the most rational use of their respective industrial, economic and technological resources;
(iii) the greatest attainable military capability at the lowest possible cost;
(iv) greater standardization and interoperability of their weapon systems.

Accordingly, it is DoD policy to seek the best possible coordination of the materiel programs between the participating countries and the United States and to ensure that sources from participating countries are provided every opportunity to compete on a fair and equal basis with U.S. sources for research and development and for production contracts consistent with 6-1402(b). Accomplishment of this policy requires exemption of foreign acquisition restrictions with respect to all items of defense equipment from participating countries.

6-1402 MOUs with NATO Participating Countries.

(a) The MOUs set forth acquisition policies with respect to defense equipment from sources in participating countries.

(b) Applicability: This Part applies except where restricted by (1) provisions of U.S. National Disclosure Policy (NDP), DoD Directive 5230.11; (2) U.S. defense mobilization base requirements as specified in 1-2207, (ii); (3) U.S. laws or regulations (e.g., the annual DoD Appropriations Act, 6-300) and (4) U.S. Industrial Security Requirements.

6-1403 Procedures for Purchases from Participating Countries

6-1403.1 Solicitation Procedures

(a) Solicitation of Sources in Participating Countries.

(1) Participating country sources shall be included on bidders mailing lists and comparable source lists upon request by such sources in accordance with the procedures in 2-205. Requests of this nature should be forwarded by participating country sources to the activity having acquisition responsibility for the supplies involved.

(2) The normal criteria for soliciting and making awards under 1-700 for small business concerns and 1-800 for labor surplus area firms

shall be utilized without regard to the fact that there are potential participating country sources for the end product, except items developed under the U.S./Canadian Development Sharing Program (6-1406.1(b). Offers of a foreign end product shall not be considered on any acquisition, or part thereof, identified for the exclusive participation for such firms.

(3) Solicitations shall be sent directly to participating country sources appearing on the appropriate bidders mailing list except when restricted by 1-2207, 6-104.4(d), 6-1402(b), 6-1405 and (2) above. In addition, Canadian sources shall also be solicited through the Canadian Commercial Corporation in accordance with 6-504. When solicitation destinations are outside the United States, international airmail shall be utilized where security classification permits. (See 2-202.1, 2-203.1, 3-503.2.)

(4) Upon request, solicitations shall be furnished to the embassy or other designated place or representative of the participating country.

(5) If unusual technical or security requirements would preclude the acquisition of otherwise acceptable defense equipment from participating country sources, the need for such requirements should be specifically reviewed. Under no circumstances will unusual technical or security requirements be imposed solely for the purpose of precluding the acquisition of defense equipment from participating countries.

(6) Participating country sources shall not be automatically excluded from submitting offers because their supplies have not been tested and evaluated by a Department. Departments which find it necessary to limit solicitations to sources whose items have been service tested and evaluated by the department shall make provision for considering supplies from participating country sources which have been tested and accepted by the participating country for service use, subject to U.S. confirmatory test if necessary. Where it appears that these provisions might adversely delay service programs, the concurrence of the Department of Defense Acquisition Executive, OUSD (Research and Engineering), shall be obtained prior to exclusion of the participating country item from consideration. Sufficiency of participating country service testing should be considered on a case-by-case basis. When confirmatory tests of participating country end products are deemed necessary by the department, U.S. test and evaluation standards, policies, and procedures shall apply.

(7) Subject to 6-1402(b), industry representatives from a participating country shall be permitted to attend symposia, program briefings, prebid conferences (see 2-207 and 3-504.2), and like meetings which address U.S. defense equipment needs and requirements. When practical these meetings should be structured so as to allow attendance by representatives of participating country concerns.

(b) Submissions of Offers.

Participating country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations.

(c) Evaluation of Offers from Participating Country Sources.

(1) In furtherance of the objectives set forth in 6-1401, the Secretary of Defense has determined that it is inconsistent with the public interest to apply the restrictions of the Buy American Act and the Balance of Payment Program with respect to acquisition of defense equipment (for items for civil works activities see 6-104.4(f)) which is mined, produced, or manufactured in a participating country.

(2) In accordance with the above, offers of participating country end products shall be evaluated without the application of the price differentials normally applied pursuant to the Buy American Act and Balance of Payments Program requirements contained in 6-104.4 and Section VI, Part 8. This exemption shall further include the following consideration: In the event that a domestic offer, a participating country offer, and a nonqualifying country offer compete for defense equipment, the participating country offer shall be evaluated without applying the price differentials of 6-104.4, whereas the nonqualifying country offer shall be subjected to the price differentials. (See 6-104.4(c), Example E.) However, in the event that the low domestic offer exceeds the evaluated price of the nonqualifying country offer, all foreign offers shall be evaluated as if no domestic offer was submitted. (See 6-104.4(c), Example F.) In the event that a participating country offer competes against a nonqualifying country offer and no domestic offer is submitted, the participating country offer shall be evaluated on an equal basis with the nonqualifying country offer. (See 6-104.4(c), Example G.) Participating countries are listed at 6-1401 and defined at 6-001.

(3) As to any end product that is manufactured in the United States, all components from participating countries are treated as components mined, produced, or manufactured in the United States for the purpose of determining whether the end product is a domestic source end product.

(4) In keeping with the policy to enhance cooperation with the participating countries, U.S. duty-free entry shall be accorded supplies from participating countries by the issuance of duty-free entry certificates. Offers of defense equipment from participating country sources shall be evaluated without application of duty. Such duty-free entry shall be accorded whenever such supplies are acquired at a prime contract or at a subcontract level. (See also 6-602 for postaward circumstances of fixed-price-type contracts.) The resulting contract shall include the appropriate clause(s) referenced in 6-603.3.

(5) If, when evaluated in accordance with the above, an offer of a participating country end product is determined to be from the lowest, responsive, responsible offeror, the cognizant contracting officer shall normally proceed to make award to that offeror. However, there is no restriction on the authority or responsibility of the cognizant Secretary to restrict acquisitions to domestic sources or reject an otherwise acceptable offer from a participating country source in those instances

where such restriction or rejection is considered necessary for reasons of the national interest. (See 6-104.4(d).)

6-1403.2 Subcontracting with Participating Country Sources.

In reviewing prime contractor subcontracting procedures, the contracting officer shall assure that the prime contractor does not preclude participating country sources from competing for subcontracts, except when restricted by national security interest reasons or mobilization base considerations. (See 6-104.4(d) and 6-1405.)

6-1403.3 Required Clause.

The clause at 7-104.106 shall be inserted in all solicitations and contracts for supplies and for services involving the furnishing of end items (e.g., leasing of equipment).

6-1403.4 Industrial Security for Participating Countries.

Required procedures designed to safeguard classified defense information which may be necessary for the performance of contracts awarded to participating country sources are set forth in the DoD Industrial Security Regulation, DoD 5220.22-R (implemented for the Army by AR 380-131; for the Navy by OPNAV Instruction 5540.8E; for the Air Force by AFR 205-4; for the Defense Logistics Agency by DLAM 8500.1; for the Defense Communications Agency by DCA Inst. 240-50-7; and for the Defense Mapping Agency by DMA Inst. 5220.22).

6-1404 Contract Administration.

When Contract Administration Services are requested on contracts to be performed in participating countries, except Canada (see 6-505), the request should be directed to the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components). Contract Administration Services required with respect to DoD subcontracts placed by participating country sources, except Canada (see 6-505), in the United States will be arranged by the cognizant activity in accordance with DoD 4105.59-H, Section II, Part 2 (DoD Directory of Contract Administration Services Components).

6-1405 List of Excluded Items. The policies and procedures of this Part do not apply to offers of the following items of defense equipment unless the quantity being acquired is greater than that required to maintain the U.S. defense mobilization base. This restriction does not apply to Canadian Planned Producers (see 6-504.1(a)(2)). Items may be added to or deleted from the list from time to time. Information concerning this list may be obtained from OUSDRE(AP), International Acquisition. (See also 1-2207.)

Navy

Fuzes, Safe and Arm Devices, and Similar Items

MK-13 Safe and Arm Device
MK-13 Triggering Device
MK-17 Safe and Arm Device
MK-33 Safe and Arm Device
MK-330 Fuze

- MK-334 Fuze
- MK-404 Fuze
- MK-407 Fuze
- FMU-109 Fuze

Missiles and Missile Components

- AIM-7F Sparrow Missile
  - Guidance and Controls Section
  - MK-58 Rocket Motors
  - MK-71 Warhead Metal Parts

- AIM-9L Sidewinder Missile
  - Guidance and Control Section
  - MK-36 Rocket Motors
  - DSU-15 Target Detector
  - AN/WDU-17 Warhead
  - MK 1 Wing and AN/BSU-32 Fins

- Trident I (C-4) Missile System
  - Guidance and Control System
  - MK-5 Electronic Assemblies (EA)
  - MK-5 Inertial Measurement Unit Electronics (IMUE) and Monitor Component Assembly (MCA)
  - Backfit of Poseidon (C-3) SSBNs

Flares

- MK-46 Flares, Infrared Decoy

Sonobuoys and Components

- AN/SSQ-36
- AN/SSQ-41B
- AN/SSQ-53A
- AN/SSQ-57A
- AN/SSQ-62

Ship Gun Systems

- MK-75 Gun Mounts

Submarine Systems

- Type 18B/D Periscope System
- TR 155 K 33 Transducers

Military Sealift Cargo

- Ocean Transportation and Services

FOREIGN ACQUISITIONS

Air Force

MAC Commercial Airlift
GAU-8/A and 30mm Ammo

Defense Logistics Agency

Textiles - Worsted

Army

L.A.P., Manufacturing & testing of projectiles (5.56mm through 8 inch), mines, dispensers, rockets, pyrotechnic devices, grenades, demolition charges, small arms ammunition and components, fuzes and components containing mechanical timing devices

- TOW Missile and Launcher
- 2.75 Rocket Items
  - LAP Motor
  - Fin & Nozzle Assy
  - Stabilizer Rod
  - Felt Washer
  - Ring Charge Support
  - O Ring
  - Metal Spacer
  - Intervelometer
  - Igniter
  - Motor Tube
  - Seal Rings
  - Disc Charge Support
  - Spacer Charge Support
  - Lockwire
  - Launcher
  - Fin Blades
- Projectile Metal Parts for Cartridge 105mm (Beehive)
- Projectile M406, M107 - 155mm
- Projectile M509 - 8 inch
- Projectile M735
- Projectile M735, Metal Parts and Cores
- Projectile M718/M141
- 155mm Cannister, XM625, XM626:
  - Projectile Metal Parts for Cartridge 90mm
- 155mm Projectile, AT M718/M741 (RAAM): Component, Electronic Assemblies
- Cartridge Case M118, M14B4
- Fuze:
  - M1 Delay
  - MK-1
  - MK-30

- MK-38 Energizer
- MK-40 Energizer
- MK-54
- MK-73-13
- MK-339-1/Inert
- MK-379
- MK-393/403
- MK-404
- MK-407
- FMU-54B
- M19
- M42/46
- M62A2
- M91A2
- M84A1
- M114 S&A
- M118 S&A
- M201A1
- M213
- M19E1
- M223
- M228
- M427/M423
- M494/571
- M505A3 (MPTS)
- M505
- M509A2
- M564
- M565
- M567 (Comp Pts/Rewk)
- M577/M582
- M578
- M578 (Comp Pts)
- M732:
  - Elec Head Final Assy
  - Detonator
  - Power Supply
  - Sleeve
  - Elec Timer, W/IC
- M904E3

Casing Burster Warhead, M156
Fin Assy M158, M170
Adapter Booster - M147, M148
Body Assy and Base Plug, M404
Bomb, M117A1E1
Launcher Rocket 2AU 68A/A
Warhead Flechets WDU 4A/A
M18 Mine Program
Blasting Cap, Firing Device, Metal Parts, Test Sets

Laser Range Finder VVG-2 and M21 for Solid State Ballistic Computer for M60 Series Tank
Limited Light Sight
MX-9644 Image Intensifer Tube 25mm
MX-7845 Image Intensifer Tube (1st generation)
MX-8501 Image Intensifer Tube (1st generation)
BA-4386 Battery
AN/PVS-4 Night Vision Sights
AN/PVS-5 Night Vision Goggles
AN/PVS-5A Night Vision Goggles
AN/VVS-2 Viewer
AN/VSS-3 Searchlight
Common Module Program (Thermal Imaging System)
    Tactical Night Vision Systems -
        AN/TAS-4
        AN/TAS-5
        AN/TAS-6
        GLLD/TAS-4
Machine Gun M240
Machine Gun M240 Spare Parts
Electronic Time Fuze XM587E2/XM724
Power Supply PS127
Fuze Setter XM36E1
Tank Thermal Sights AN/VSG-2
Night Vision Goggles AN/PVS-5A
Image Intensifer Assy MX-9916/UV
Battery, Dry BA-4386
Maintenance of idle portions of 21 GOCO facilities
Consolidated Facilities Scranton AAP
Hydraulic Turbine (Civil Works)

6-1406 Participating Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding, and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act in order to implement the MOUs contained in this Part.

6-1406.1 Canadian Agreements.

(a) Letter of Agreement With Canada.

1. This agreement applies to all contracts placed, on or after October 1, 1956, by any of the Military Departments with the Corporation. It shall remain in force from year to year until terminated by mutual consent; however, it can be terminated on the 31st day of December or the 30th day of June in any year by either party provided that six months notice of termination has been given in writing. In addition, this agreement provides for certain reciprocal arrangements

facilitating procurement by each of the parties in the country of the other.

2.(a) The Corporation agrees that it will cause all first-tier subcontracts under contracts covered by this agreement to be placed in accordance with the practices, policies, and procedures of the Government of Canada covering procurement for defence purposes; and agrees that if the aggregate profit realized under such subcontracts by any first-tier subcontractor exceeds that which is allowed by the Government of Canada under the above mentioned practices, policies, and procedures, the amount of such excess will be refunded by the Corporation to the Military Departments. There shall also be refunded profits on any subcontract in excess of amounts which the Minister of Defence Production (Canada) in the exercise of said practices, policies and procedures considers to be fair and reasonable, recovered by the Minister pursuant to Section 21 of the Defence Production Act (Canada) from any individual subcontractor of any tier. It is recognized that the practices, policies and procedures of the Government of Canada referred to above permit various rates of profit in accordance with the terms of the said practices, policies, and procedures as from time-to-time amended; however, in no case will the rate of profit be allowed to exceed any limit prescribed by statute of the Government of the United States. For the purpose of this paragraph, the Corporation will cause to be conducted such audits in accordance with the Costing Memorandum (DDP-31) of the Department of Defence Production (Canada) and such verifications of cost as are in accordance with the said practices, policies, and procedures. The Corporation will render to the Military Departments its certificate that the provisions of this paragraph have been observed.

(b) Contracts for communication and transportation services, and the supply of power, water, gas and other utilities shall be excepted from the provisions of subparagraph (a) above, provided the rate or charges for such services or utilities are fixed by public regulatory bodies; and provided further the Military Departments are accorded any special rates that may be available to the Canadian Government with respect to such contracts.

(c) The Canadian Government, its Department and Agencies, including but not limited to the Corporation and Canadian Arsenals Limited, a Crown Company wholly owned by the Canadian Government, shall not be entitled to any profit on any contract or contracts covered by this agreement. Any profits which may be realized shall be returned to the Military Departments except as hereinafter provided: Before refunding profits realized from the following sources:

(i) net profits of the Canadian Government, its Departments and Agencies, as defined above, with respect to contracts and subcontracts covered by this agreement.

(ii) excess profits referred to in paragraph (a) above, and

(iii) renegotiation recoveries from subcontracts of any tier under contracts covered by this agreement, which recoveries the Military Departments would otherwise be entitled to receive in accordance with the provisions of subparagraph (a) above;

the Corporation shall be entitled to deduct any losses it may sustain with respect to contracts covered by this agreement.

(d) Interim adjustments and refunds under this paragraph 2 shall be made at such time or times as may be mutually agreed upon but at least once a year as of June 30th. Such interim adjustments shall apply only to completed contracts. The final adjustment and refund shall be made as soon as practicable after the expiration of this agreement.

(e) The profit and loss provisions of this paragraph 2 shall not apply to contracts awarded to the Corporation as the result of formal competitive bidding (initiated by Invitation for Bids).

3.(a) All contracts placed by the Military Departments with the Corporation, except those placed as the result of formal competitive bidding, shall provide for prices or cost reimbursement, as the case may be, in terms of Canadian currency, and for payment to be made in such currency. Therefore, quotations and invoices shall be submitted by the Corporation to the Military Departments in terms of Canadian currency, and such cost data, vouchers, etc., as the contracts require shall also be submitted in terms of Canadian currency. However, the Corporation may elect in respect of any of such contracts to quote, submit the said cost data, vouchers, etc., and receive payment in United States currency, in which event such contracts shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuations in exchange rates.

(b) All formal competitive bids shall be submitted by the Corporation in terms of United States currency and contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

4. The Military Departments and the Corporation shall avoid, to the extent consistent with the declared policies of the Military Departments and the Canadian Government, the making of any surcharges covering administration costs with respect to contracts placed with the Corporation by any of the Military Departments and contracts placed by the Military Departments in the United States for the Canadian Government.

5. To the extent that contracts placed with the Corporation by the Military Departments provide for the audit of costs and profits, such audit will be made without charge to the Military Departments by the Cost Inspection and Audit Division of the Treasury of Canada in

accordance with Costing Memorandum Form DDP-31 of the Department of Defence Production, Canada.

6. The Canadian Government shall arrange for inspection personnel of the Department of National Defence (Canada) to act on behalf of the Military Departments with respect to contracts placed by the Military Departments with the Corporation and with respect to subcontracts placed in Canada by United States contractors which are performing contracts for the Military Departments, and for the use of inspection facilities of the Department of National Defence (Canada) for such purposes, such personnel and facilities to be provided without cost to the Military Departments. The Military Departments shall provide and make no charge for inspection services and inspection facilities in connection with contracts placed in the United States by the Military Departments for the Canadian Government and with respect to subcontracts placed in the United States by Canadian contractors which are performing contracts for the Department of Defence Production* (Canada). The Department of National Defence (Canada) or any Military Department may provide liaison with the other's inspection personnel in connection with the foregoing. It is understood that either the Department of National Defence (Canada) or any Military Department may in appropriate cases arrange inspection by its own inspection organization in the other's country.

7. Because of the varying arrangements made by the Canadian Government and the Military Departments in furnishing Government-owned facilities (including buildings and machine tools) to contractors, it is recognized that the matter of inclusion in contract prices of charges, through amortization or otherwise, for use of such facilities will be determined in the negotiation of individual contracts. However, there shall be avoided, to the extent consistent with the policies of the Canadian Government and Military Departments, any such charges for use of Government-furnished facilities.

8.(a) The Corporation agrees that the prices set out in fixed-price type contracts covered by this Agreement will not include any taxes with respect to first-tier subcontracts; nor shall prices include custom duties to the extent refundable in accordance with Canadian law, paid upon the import of any materials, parts, or components incorporated or to be incorporated in the supplies, with respect to first-tier subcontracts.

(b) The Corporation agrees that under cost-reimbursement type contracts the Corporation shall, to the extent practicable with respect to first-tier subcontracts, exclude from its claims all taxes and to the extent refundable in accordance with Canadian Law, customs duties, paid upon the import of any materials, parts or components, incorporated or to be incorporated in the supplies and that any amounts included in such claims representing such taxes and duties shall be refunded or credited to the Military Departments.

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(c) The Corporation agrees that to the extent that such taxes and duties can be reasonably and economically identified it will use its best endeavors to cause such taxes to be excluded from all subcontracts below the first tier and if found to be included to be recoverable and credited to the Military Departments.

9. The Corporation recognizes that existing law of the United States prohibits the use of the cost-plus-a-percentage-of-cost system of contracting.

10. Each contract covered by this agreement shall be deemed to include the provisions required by (i) Public Law 245, 82nd Congress of the United States (65 Stat. 700; 41 USC 153(c)) and (ii) Section 719 of Public Law 458, 83rd Congress of the United States (68 Stat. 353) or similar provisions that may be required by subsequent legislation.

(End of Agreement)

* now the Department of Supply and Services

(b) Cooperative Agreement with Canada.

MEMORANDUM OF UNDERSTANDING IN THE FIELD OF COOPERATIVE DEVELOPMENT BETWEEN THE UNITED STATES DEPARTMENT OF DEFENSE AND THE CANADIAN DEPARTMENT OF DEFENCE PRODUCTION

This Memorandum of Understanding complements the U.S.-Canadian Defence Production Sharing Program by establishing a cooperative agreement in defense research and development between the United States Department of Defense (DoD) and the Canadian Department of Defence of Production (CDDP), called the Defense Development Sharing Program.

1. Objectives:

The principle objectives of the Defense Development Sharing Program are:

a. To assist in maintaining the Defense Production Sharing Program at a high level by making it possible for Canadian firms to perform research and development work undertaken to meet the requirements of U.S. armed forces.

b. To utilize better the industrial scientific and technical resources of the United States and Canada in the interest of mutual defense.

c. To make possible the standardization and interchangeability of a larger amount of the equipment necessary for the defense of United States and Canada.

2. Description of the Program:

a. The Defense Development Sharing Program will consist of research and development projects (such program projects being here and after referred to as "projects"):

(1) which are performed by Canadian prime contractors;

(2) which are designed to meet specific DoD research and development requirements;

(3) in which the Military Department of DoD which is the United States party to the project agreement acts as the design authority; and

(4) which are jointly funded by DoD and CDDP, (Where DoD undertakes the research and development of a weapons system composed of several components, work funded by CDDP on one or more of such components will be considered to be jointly funded).

b. The Defense Development Sharing Program will not include efforts referred to in paragraph 13.

3. Funding:

The financial contribution of DoD in each project will not be less than 25 percent of the costs incurred subsequent to the date of the project agreement provided that in the case of work referred to in the parenthetical sentence of paragraph 2.a(4), the financial arrangements shall be as agreed to by DoD and CDDP in the project agreement.

4. Selection of Projects:

A proposal to initiate a project may be made by CDDP to any of the Military Departments of DoD or by any of the Military Departments of DoD to CDDP. Each proposal will contain a complete and detailed description of the scope of the project and work to be performed and of the suggested cost sharing arrangement. Projects will be selected by mutual agreement of CDDP in the Military Department of DoD concerned.

5. Project Agreements:

The specific terms and conditions of each project will be governed by a project agreement between the Military Department of DoD and CDDP. The project agreement will inter alia set forth the scope of the projects, the work to be performed, types of reports to be submitted, the time and funding schedules, and the cost of sharing arrangements.

6. Selection of Prime Contractors:

The selection of prime contractors for work to be performed under a project shall be subject to mutual agreement.

7. Contract Clauses for Projects:

The Canadian Government agencies responsible for placing and administering research and development contracts with Canadian firms, will insert suitable provisions in such contracts obtaining for DoD the same production rights, data, and information that DoD would obtain for itself if DoD were solely funding and placing the contract under its Armed Services Procurement Regulation.

8. Competitive Research and Development:

DoD will not engage in research and development which duplicate the work being carried out under any project unless DoD considers such research and development to be in the United States national interest. The appropriate DoD agency will notify CDDP before undertaking such duplicative research and development and will, if requested by CDDP, promptly enter into consultations with CDDP.

9. DoD Procurement of Researched Developed Items:

Procurement by DoD from Canadian firms of items developed in a project will be made under the Defense Production Sharing Program and in accordance with the DoD Armed Services Procurement Regulation. Pursuant to that Regulation, procurement of items developed by Canadian firms under the Defense Development Sharing Program will not be "set aside" for small business or for labor surplus areas.

10. Security:

a. Information and materials developed within projects will be considered to be jointly developed, and classification and declassification thereof will be determined jointly.

b. Classified information and materials exchanged in connection with or developed within projects will be safeguarded in accordance with the United States-Canadian Security Agreement of January 30, 1962, in the United States-Canadian Industrial Security Agreement effected by an exchange of letters dated February 6 and March 31, 1952, as amended.

11. Disclosure of Classified Information:

a. Classified information and materials received by either Government under the Defense Development Sharing Program but not developed within a project will not be disclosed or transferred to third

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countries, or nationals of third countries, without the consent of the originating Government.

b. Jointly developed classified information materials will not be transferred or disclosed to any third party by either Government or nationals thereof without the consent of the other Government.

12. Sales:

a. Sales or transfers to any third party of items developed in a project containing classified information or materials will be subject to the provisions of paragraph 11.

b. Sales or transfers to NATO, Commonwealth, and SEATO countries, or nationals thereof, of jointly developed unclassified items may be made in accordance with any applicable arrangements between Canada and the United States regarding munitions control. Sales or transfers to any other third party of jointly developed unclassified items will not be made without the consent of both parties to this agreement.

c. Sales or transfers to any third party of jointly developed unclassified rights, information, or data necessary for the production of an item developed in a project will not be made without the consent of both parties to this agreement.

13. Other Research and Development Efforts not in Defense Development Sharing Program:

a. Consistent with normal DoD source selection procedures, Canadian firms may bid for DoD research and development contracts which are to be funded solely by the United States. DoD will evaluate proposals from qualified Canadian firms on a parity with proposals received from United States firms. CDDP undertakes to ensure that Canadian firms comply with DoD procurement procedures.

b. CDDP may award and solely fund research and development contracts to Canadian firms for the purpose of satisfying existing or anticipated DoD requirements. DoD and its Military Departments will not act as Design Authority for such contracts. In the event that the results of any such contract become of sufficient interest to DoD to warrant joint funding, the contract work may, upon mutual agreement, be made the subject of the Defense Development Sharing Program project.

14. Canadian Access to United States Information:

Subject to United States legislation and national policy, the Government of Canada will have access to information on the future requirements of DoD research and development programs and Canadian firms will have the same access to DoD research and development program information as United States firms.

15. Supersession of Prior Arrangements:

This Memorandum of Understanding supersedes the memoranda between CDDP and the United States Departments of the Army, and Air Force, respectively, dated July 26, 1960 and December 22, 1961, except with respect to projects already entered into thereunder.

16. Effect and Duration:

This Memorandum of Understanding will remain in force indefinitely, subject to modification or termination at any time by mutual agreement or to termination six months after receipt by either party of written notice of the intention of the other party to terminate it.

Charles M. Drury	Robert S. McNamara
Minister of Defence Production	Secretary of Defense
Date: 21 November 1963	Date: 16 November 1963

6-1406.2 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND RELATING TO THE PRINCIPLES GOVERNING COOPERATION IN R&D, PRODUCTION, AND PROCUREMENT OF DEFENSE EQUIPMENT (SHORT TITLE: COOPERATION ARRANGEMENT).

The Government of the United States (USG) and the Government of the United Kingdom of Great Britain and Northern Ireland (HMG), hereinafter referred to as the Governments, are developing high technology weapons systems and other advanced items of defense equipment and are seeking to achieve greater cooperation in research, development, production and procurement in these areas in order to make the most rational use of their respective industrial, economic and technological resources, to achieve the greatest attainable military capability at the lowest possible cost, and to achieve greater standardization and interoperability of their weapons systems.

The Governments already have an Arrangement dated May 1963 for Joint Military Development and the USG has certain offset arrangements with HMG against purchases by HMG of major weapons systems and items of defense equipment.

In order to further the above aims, the Governments have decided to enter into an understanding and this Memorandum sets out the guiding principles governing mutual cooperation in defense equipment production and purchasing and associated offset arrangements. This Memorandum is intended to fit into the broader context of NATO Rationalization/

Standardization and to be compatible with any NATO arrangement that might subsequently be negotiated.

SECTION A: PRINCIPLES GOVERNING RECIPROCAL DEFENSE PURCHASING

1. Each Government has established its policies for strengthening the mechanisms essential to increasing cooperation in research, development, and production and procurement of military systems. In keeping with these policies, and in the interests of enhancing their mutual security and to assist the Governments in discharging better their mutual defense obligations, it is understood that the Governments will cooperate in all respects practicable, to the end that defense equipment production and procurement efforts of the two countries be administered so as to assure the maintenance of a long term and equitable balance in reciprocal purchasing of defense equipment. This balance will be at levels to be mutually determined.

2. The following principles to facilitate these objectives have been decided upon by the Governments:

a. Both Governments will provide appropriate policy guidance and administrative procedures within their respective Defense procurement organizations to achieve and maintain the agreed-upon balance of reciprocal Defense purchases.

b. The Governments will identify and nominate for consideration by each other items of defense equipment believed suitable to satisfy their respective requirements. The Governments will decide between them, to which items of defense equipment purchases this Memorandum of Understanding (MOU) will apply and whether the items may be procured on a Government-to-Government or Government-to-Industry basis.

c. The detailed implementing procedures to be arranged will incorporate the following:

(i) Offers will be evaluated without applying price differentials under Buy-National laws and regulations consistent with national laws and regulations.

(ii) Offers will be evaluated without the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

(iii) Full consideration will be given to all qualified sources in each other's country in accordance with the policies and criteria of the purchasing office.

(iv) Offers will be required to satisfy requirements for performance, quality, delivery, and cost.

d. To facilitate production programs set up in implementation of this MOU, the Governments understand that subject to their established policies, procedures, regulations and subject to privately owned proprietary rights, each Government will, so far as it is able, release to the other and to its agents of information and technology necessary for the purposes of such facilitation.

e. The Governments, through their appropriate representative, will consult concerning any problems which may inhibit the efficient operation of this arrangement. Such consultations will be conducted on the basis of SECTION B of this MOU.

SECTION B: IMPLEMENTATION MACHINERY

1. Both Governments understand that detailed implementing procedures need to be considered and decided upon in order to carry out the provisions of this MOU. Representatives of the Governments will be appointed to develop a coordinated program of such implementing procedures, and to discuss procurement and production needs of the Governments. These representatives will meet as required.

2. The Director, Defense Security Assistance Agency, under the policy guidance of the Assistant Secretary of Defense (International Security Affairs), and in coordination with the Director, Defense Research and Engineering, the Assistant Secretary of Defense (Installations and Logistics and other DoD offices will be the focal point in the US Government for the development of an overall coordinated program of implementing procedures under this MOU. The Director, Defense Research and Engineering will be responsible for matters under this MOU touching upon research, development, test and evaluation as they relate to bilateral arrangements for joint military development. The Assistant Secretary of Defense (Installations and Logistics) will be responsible for managing procurement and production matters under this MOU on a continuing basis, in coordination with OASD(ISA), DSAA and other appropriate DoD offices.

3. The Head of Defense Sales, MOD, under the policy guidance of the Minister of State for Defence, and in consultation, as appropriate with the Chairman and members of the MOD Defence Equipment Policy Committee, will be responsible on the UK side for the development of an overall coordinated program of implementing procedures under this Memorandum of Understanding.

SECTION C: INDUSTRIAL PARTICIPATION

1. Each Government will be responsible for bringing to the attention of the defense industries within its country, the basic understanding of this MOU, together with appropriate guidance on its implementation.

2. Implementation of this MOU will involve full industrial participating. Accordingly, the Governments will arrange that their respective procurement and requirements offices will be made familiar with the principles and objectives of this MOU. Notwithstanding the governmental procedures to facilitate implementation, it will be the basic responsibility of industry in each country to isolate, identify, and advise its Government of capabilities and to carry out the supporting actions to bring industrial participation to consummation.

SECTION D: TERMINATION

1. This MOU will be terminated on 1 January 1985 unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this MOU before 1 January 1985, any proposal for termination will be the subject of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination.

SECTION E: FURTHER COOPERATION

Annexes subsequently negotiated by the responsible offices and endorsed by appropriate Governmental authorities will form an integral part of this Memorandum of Understanding.

SECTION F: EFFECTIVE DATE

This Memorandum of Understanding will come into operation upon signature by the Governments.

Signed in duplicate at London this 24th day of September 1975.

James R. Schlesinger
For the Government of the
United States

Roy Mason
For the Government of the United
Kingdom of Great Britain and
Northern Ireland

Date 24 September 1975

ANNEX I

Implementing Procedures for the "Memorandum of Understanding between the Government of the United States and the Government of Great Britain and Northern Ireland Relating to the Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment" of 24 September 1975.

I INTRODUCTION

On 24 September 1975 the Governments of the United States (US) and the United Kingdom (UK) signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment". The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II MAJOR PRINCIPLES

A. Both the US and UK will consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed and produced in the other country. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation. The responsible governmental purchasing agencies in each country will seek to inform themselves of the defense items which might be available from the other country to meet specific requirements.

B. Offers will be evaluated without applying price differentials under Buy-National laws and regulations.

C. Offers will be evaluated without consideration of the cost of import duties, and provision will be made for duty-free entry certificates and related documentation.

D. Full consideration will be given to all qualified industrial and/or Government sources in both the US and UK consistent with the policies and criteria of the respective purchasing agencies.

E. Offers will be required to satisfy requirements for performance, quality, delivery, continued logistic support, and cost. In preparing Invitations for Bids and Requests for Proposals, and in evaluating Offers, where applicable and consistent with national laws and regulations full consideration will be given to potential NATO savings and/or increased NATO combat capability expected to result from the procurement of items that are standardized or interoperable with those of the Allies.

III ACTION

In implementing the MOU both countries will review and, where considered necessary, revise defense policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization are taken into account. In addition both countries will:

A. Ensure that their respective requirement offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU, which are complemented by the "Arrangements for Joint Military Development by the US and the UK" of 1963.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Assist industries in their respective countries to identify and advise the other government of their capabilities and assist industries in carrying out the supporting actions to maximize industrial participation.

F. Review defense items submitted as candidates for respective requirements. Indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility.

G. Make best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

H. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements (for the maintenance of a defense mobilization base) are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from nonnational sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

I. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

IV COUNTING PROCEDURES

The US and UK Governments will decide between them to which items of defense equipment this MOU will apply but in principle all defense items (and associated services included in a procurement contract) purchased by either country will be counted against the goals of this MOU as long as they meet the following criteria:

A. Direct purchases by either Government from the other, including its Agencies;

B. Direct purchases by either Government from the industry of the other country;

C. Purchases by Industry from the Government or Industry of the other country in aid of Government defense contracts;

D. Purchases by a third country government from either US or UK Government or industrial sources as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded projects to which the US and/or UK are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The applicability of such purchases to this MOU will be agreed between MOD/OSD in each case.

F. License fees, royalties and other associated income resulting from orders placed by Industry and/or Government with a licensed company in the other country.

V ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual US/UK Statement of the current balance, and long term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any

US-UK Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B above.

HOWARD M. FISH	R. Anderson
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
2 April 1976	2 April 1976
Date	Date

ANNEX II

MUTUAL ACCEPTANCE OF TEST AND EVALUATION

INTRODUCTION

1. In furtherance of the principles governing reciprocal Defence purchasing, as defined in the subject Memorandum of Understanding (MOU) and in accordance with the Implementing Procedures for the MOU (Annex I thereto), representatives of the US Department of Defense (DoD) and the UK Ministry of Defence (MOD) have engaged in discussions and presentations on Test and Evaluation (T&E) in Defence procurement. The discussions were aimed at facilitating the implementation of the MOU by:

a. Bringing about a thorough, mutual understanding of the two governments' policies, organizations and procedures for T&E.

b. Identifying the main differences between the two governments' organisations and procedures for T&E.

c. Determining the actions required to overcome any difficulties arising from the identified differences, in order to assure complete mutual acceptability of T&E procedures.

2. The purpose of this Annex, drawn up in accordance with Section E of the MOU, is to record the concurrence reached by the two governments concerning the mutual acceptability of their respective T&E procedures for those systems that are developed in one country and are candidates for procurement by the other. Two categories of Defence systems are considered:

a. Those still under development.

b. Those for which development is complete.

POINTS OF CONCURRENCE

3. The objective is to avoid redundant testing. Neither government will duplicate tests where acceptable data is available from the other government's official test programs.

4. Existing T&E organisations and procedures of both governments are adequate to satisfy the purposes of the MOU. Differences are not such as to justify changes being made to the present procedures of either government.

5. To achieve a more widespread understanding of the two governments' T&E organisations and procedures in the US DoD, in the UK MOD, and in the Industries of both countries, the two governments will produce guidance information necessary to meet the purpose of this Annex, including:

a. The relationship between their respective T&E organizations and procedures.

b. A US DoD-UK MOD communications matrix for initial contacts.

6. The focal point for all T&E aspects of procurement relating to development testing will be the US Program Manager or the UK Project Manager for the equipment being offered. For operational testing aspects, it will be the applicable US Services' independent operational test agency and in the UK, the Project Manager.

MUTUAL ACCEPTANCE PROCEDURES

7. All proposals for consideration of equipment of one country for procurement by the other will require a review of T&E data reflecting test conditions, test results and success criteria on a case-by-case basis. The following procedures will therefore be observed in all procurement considerations:

a. To facilitate the exchange of T&E data, a common documentation format will be adopted. This format will be similar to the US Navy's Test and Evaluation Master Plan (TEMP) as outlined in OPNAV Instruction 3960.10.

b. For systems under development, the offering government will invite participation by the other early in the T&E program. Should the other government not choose to participate in the testing, the offering Government, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, will arrange for the release to the other of information necessary for the purposes of such T&E.

c. For systems for which development is complete, the offering government will ensure, subject to its laws, established policies, procedures and regulations, and subject to privately owned proprietary rights, that all pertinent T&E data is made available to the other.

d. Should one government adjudge the T&E which has been completed or planned by the other to be inadequate for its procurement procedures, the two governments will decide by mutual agreement on any additional testing to be carried out. Such additional testing may be conducted by either country as mutually agreed. In addition, before such additional testing commences, concurrence will be reached by the two governments regarding payment of costs, allocation of resources, scheduling and the evaluation criteria which will apply.

e. When either government releases T&E data to the other, it is understood that, in the absence of any specific agreement to the contrary, such data is made available in confidence to the receiving government for the purpose of information and evaluation within such government and for no other use.

f. Each government will mark data transmitted to the other with a legend that will indicate the country of origin and the conditions of release, that the data relates to this MOU, and that is is furnished in confidence. Where appropriate the security classification will be shown. Corresponding arrangements will be made for records of data transmitted orally.

g. Each government will make its best effort to protect data submitted in confidence by the other government. In the event of any request under domestic legislation to make available to the public such data furnished by the other government, the recipient government will take all legal steps available to it to withhold the data from disclosure.

8. In any case where agreement cannot be reached between the focal points or their Service superiors concerning the acceptability of T&E, or when it is felt that adequate data and information on T&E have not been provided, the matter will be referred to the appropriate higher authority. For the US this will be the Director Defense Test and Evaluation and for the UK this will be the appropriate Systems Controller.

William J. Perry	Sir Clifford Cornford
For the Government of the United States	For the Government of the United Kingdom of Great Britain and Northern Ireland
9 October 1978	9 October 1978
Date	Date

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ANNEX III

RECIPROCAL AUDITS OF CONTRACTS AND SUBCONTRACTS

I GENERAL

The US/UK Memorandum of Understanding on Co-operation Arrangements envisages the need for detailed implementing procedures to be decided upon. This Annex deals with reciprocity in the handling of auditing activity related to contracts and sub-contracts falling within the scope of the MOU.

The participating Governments recognize the mutual benefit of undertaking reciprocally for each other in their respective countries price proposal audits and contract cost audits in connection with the acquisition of defence equipment. As used in this Annex the term "audit" may include, but is not limited to, the following services including Field Pricing Support as appropriate to the contract or sub-contract concerned:

- Survey of contractor's capability;
- Pre-contract audit;
- Audit during contract performance;
- Audit after contract performance, e.g. termination, before payment of final price in respect of fixed price contract or cost type contract;
- Verification of compliance with requirements set forth by the purchasing government for accounting of contract costs or pricing;
- Verification after contract award of the currency, accuracy and completeness of data supporting a contractor's price proposal.

II PURPOSE AND SCOPE OF AUDITS

The purpose of these audits will be to examine proposed or incurred costs and supporting data in sufficient detail to enable the cognizant contracting officer to determine their acceptability during negotiations with the relevant contractor or sub-contractor.

Audits performed under the provisions of this Annex will cover all elements of cost and identify profit amounts. The auditors will use to the fullest extent possible previously available data pertinent to the intended or actual contract or sub-contract.

III AUDIT AGENCIES

The audits will be performed pursuant to the provisions of this Annex by the following agencies:

- For audits in the United States when requested by the United Kingdom Government, the Defense Contract Audit Agency (DCAA).

- For audits in the United Kingdom when requested by the United States Government, the Accountancy Services (AS(PE)) of the Ministry of Defence.

IV AUDIT REQUEST PROCEDURES

Requests for audits will be transmitted as follows:

Requests by the United Kingdom Government:

- Cognizant Procuring Contracting Office for Acquisitions under U.S. Foreign Military Sales (FMS) procedures.
- The Director of Defense Contract Audit Agency, Cameron Station, Alexandria, Virginia 22314, for all other acquisitions.

Requests by the United States Government:

- Head of Contracts Policy, Procurement Executive, Ministry of Defence.

These requests will be transmitted with all the supporting documents and required format of the audit report.

V OPERATING RULES

Before any relevant contract action commences, representatives of each Government will consult with one another as necessary to define the goals and the scope of the audits required.

The audits will pay regard to the Government accounting conventions applicable to the supplier's business and be performed in accordance with the terms of the contract or sub-contract as required by the law and policy of the purchasing Government.

Each Government will accept auditing services performed on its behalf by the other as if it had performed those services itself as long as these reflect the particular or specific interest of the purchasing authority.

Each Government will make available to the other data pertinent to the relevant contract or sub-contract, including that associated with disclosed accounting practices, in support of the contracting officer's negotiation activity.

Applicable contracts or sub-contracts will invoke the provisions of this Annex.

Each audit report will respond to the questions contained in the request for audit and will detail any problems encountered during the audit. The report should enable the contracting officer to evaluate independently the acceptability of the price proposals or costs.

Upon request of the contracting officer, additional information, supporting data, and explanations or clarifications will be provided to him or to his duly authorized representatives. The contracting officer will have the final authority to determine when adequate audit information has been provided for negotiation purposes.

Each Government will endeavor that in all possible cases its agencies will perform audits under the provisions of this Annex. If, due to extraordinary circumstances, a Government is unable to perform an audit, or to perform it in a reasonable time, the contracting country's agencies would have a right to perform the audit themselves.

VI PROTECTION OF INFORMATION

Each audit report will be prepared by the audit agency and submitted in confidence. No report, or data therein, will be disclosed to third parties unless the cognizant authorities of both parties and the audited supplier deem this to be appropriate. However, the contracting officer will normally release the final results of audits of sub-contractors to higher tier contractors for negotiation pruposes. Specific information or extracts from the report may only be given to higher tier contractors in accordance with any directions or qualifications contained in the audit report.

Data obtained through the implementation of this Annex will receive the same protection against unauthorized disclosure as such data would normally receive under the laws and rules of the country which receives it.

VII NATIONAL SECURITY

Access to classified information involving the national security of each country will be governed by the provisions of the MOU.

William Levitt	Leonard Salthouse
United States	United Kingdom
21 June 1979	21 June 1979
(date)	(date)

6-1406.3 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF NORWAY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Norway hereinafter referred to as the Governments:

- Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production and procurement of defense equipment, in order to:
  - Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies; and
  - Promote the widest possible use of standard or interoperable equipment; and
  - Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;
- Noting that no general agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past; and
- Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment

have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles government mutual cooperation in defense equipment research and development, production and procurement.

The Government of the United States of America and the Government of Norway conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements or the relevant provisions of such agreements between the Independent European Program Group (IEPG) and the United States of America shall take precedence over this Memorandum of Understanding, assuming Norway is a party to such agreements.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to achieve and maintain a long-term equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. Equitable balance, in principle, shall be achieved when the two Governments have exhausted all means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent permitted by the size and nature of each country's technological and industrial base.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production and procurement, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with the laws, regulations, and practices having the force of law of each Government, give full consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their relevant industries.

5. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of equipment that might be suitable for use by the other Government. Indicative lists are provided in the annexes.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement

organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurement or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit. This includes the removal of customs duties and other discriminatory levies as well as the waiver of protectionist provisions.

9. Normal competitive contracting procedures shall be used in acquiring items of conventional defense equipment developed in each other's country for use by either country's defense establishment.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Government.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries.

14. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for a Norwegian-

American Committee for Reciprocal Procurement, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Government of Norway for any matter relating to the procedures for implementing this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security of Information Agreement dated 26 February 1970 between the United States Department of Defense and the Norwegian Ministry of Defense apply to activities under this Memorandum of Understanding.

ARTICLE V

Duration

1. This agreement will remain in effect for a ten-year period following its signing, unless otherwise agreed by both Governments.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Norway Statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway offset agreements in force when the Memorandum of Understanding was signed, and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this Memorandum of Understanding and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Norway upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Norwegian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the Government of Norway The Minister of Defense	For the United States Government The Secretary of Defense
Rolf Hansen	Harold Brown
Date May 19, 1978	Date May 19, 1978

ANNEX 1

I. INTRODUCTION

On 19 May 1978 the Governments of the United States (US) and Norway signed a Memorandum of Understanding (MOU) relating to "The Principles Governing Cooperation in R&D, Production and Procurement of Defense Equipment." The purpose of this document is to set forth the agreed implementing procedures for carrying out the MOU.

II. MAJOR PRINCIPLES

A. The US Department of Defense (DoD) and the Ministry of Defence of Norway (MOD) will each consider for their defense requirements qualified defense items (and associated services included in a procurement contract) developed or produced in the other country. (See also Paragraph III of this Annex). MOD and DoD will also identify to one another, as soon as possible, those practices of their respective countries having the force of law that may potentially restrict the fulfillment of the Memorandum of Understanding and this Annex.

B. It will be the responsibility of government and/or industry representatives in each country to obtain information concerning the other country's proposed developments and purchases and to respond to requests for proposals. However, the responsible governmental purchasing agencies in each country will assist sources in the other country to obtain information concerning proposed purchases, necessary qualifications and appropriate documentation.

III. ACTION

In implementing the MOU, DoD and MOD will review and, where considered necessary revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. The DoD and the MOD agree that having taken the measures listed below, they will have fulfilled their obligation under Paragraph 1, Article I, of the MOU, to exhaust all means at their disposal to maximize defense R&D cooperation and reciprocal procurement. These measures will be utilized in a reasonable manner recognizing among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, and requirements attendant to ensuring free and full competition for the award of contracts.

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MOU.

B. Ensure that their respective research and development offices are familiar with the principles and objectives of this MOU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MOU.

D. Ensure wide dissemination of the basic understanding of this MOU to the respective defense industries.

E. Ensure that, consistently with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation.

F. Assist industries in their respective countries to identify and adivse the other government of their capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to participate in the development or production procurement process.

H. Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

I. Ensure that those items excluded from consideration under this MOU for reasons of protecting National requirements such as the maintenance of a defense mobilization base are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items, as well as those items which would not be qualified as a defense item under this MOU because of legally imposed restrictions on procurement from non-national sources, should be identified as soon as possible in lists drawn up by MOD and OSD for their respective countries, and that the position should be kept under review at this level.

J. Ensure that the balance of reciprocal purchasing within the areas of this MOU takes into consideration the levels of technology involved, as well as the contractual value.

K. Both DoD and MOD will from time to time arrange visits by relevant personnel to the other country in order to actively explore possibilities for R&D cooperation and procurement.

IV. COUNTING PROCEDURES

The purchases to be counted against the goals of the MOU will be identified jointly by DoD and MOD. In principle (1) all items procured by the overseas Base Exchanges and Commissary Operations for resale overseas shall be counted and (2) all defense items (and associated services included in a procurement contract) purchased by DoD and MOD from the other country will be counted against the goals of the MOU as long as such purchases meet the following criteria:

A. Direct purchases by the MOD or DoD, including their respective agencies, from one another.

B. Direct purchases by either the MOD or DoD from the industry of the other country.

C. Purchases by industry from the government or industry of the other country in aid of government defense contracts.

D. Purchases by a third country government from the governments of the United States or of Norway or from industries of the two countries as a direct result of effort of the other (non-supplying) country.

E. Purchases resulting from common funded defense projects to which the United States and/or Norway are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MOU will be agreed between MOD and DoD in each case.

F. License fees, royalties and other associated income resulting from orders placed by industry and/or DoD or MOD with a licensed company in the other country.

V. ADMINISTRATION

A. Each country will designate points of contact at the Ministry of Defence level and in each purchasing service/agency.

B. Country representatives will meet at agreed intervals to review progress in implementing the MOU. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

C. An annual United States/Norway Statement of the current balance and long-term trends, of purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States-Norway Offset agreements in force when the MOU was signed, and will be reviewed during the meetings referred to in B. above.

D. Quality Assurance procedures outlined in STANAC 4107 and 4108 will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be afforded in accordance with the National laws and regulations of each country.

United States Government	For the Government of Norway
______________________	______________________

6-1406.4 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of the Netherlands, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research and development, production and procurement in order to:

- Make the most cost-effective and rational use of the resources available for defense,

- Ensure the widest possible use of standard or interoperable equipment,

- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Recalling that they had agreed, as members of the Alliance, to maximum cooperation in procurement as set forth in Annex A to NATO Document C-M(73)51 (revised), dated 20 August 1973,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research and development, production and procurement of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent Europe Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance and that this cooperation will be carried out pursuant to the Mutual Defense Assistance Agreement between the Government of the United States of America and the Government of the Kingdom of the Netherlands, signed 27 January 1950.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research and development, production and procurement of conventonal defense equipment, complementing the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organization to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid for proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement of those owning or controlling proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

13. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Netherlands-U.S. Committee for Procurement Cooperation.

2. The Under Secretary of Defense for Research and Engineering, in cooperation with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower,

Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be the responsible authority in the United States Government for the development of implementating procedures under this MOU.

3. The Director General for Materiel in the Ministry of Defense, in cooperation with other appropriate government authorities, will be the responsible authority of the Government of the Netherlands for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this MOU are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

ARTICLE V

Administration

1. The Netherlands-U.S. Committee for Procurement Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of, and

keep under review, the financial statement referred to below; and consider any other matters relevant to the MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Netherlands statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed. Such statement will take account of United States-Netherlands purchases of defense equipment and services and related offset agreements effected in the years from 1973 onwards and will be periodically reviewed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for succesive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

3. The Parties hereto agree that, for the purposes of this MOU, references to the Kingdom of the Netherlands shall apply only to its territory in Europe.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the Kingdom of the Netherlands The Minister of Defense	For the Government of the United States of America The Secretary of Defense
Willem Scholten	Harold Brown
Date August 24, 1978	Date July 25, 1978

ANNEX I

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 24 August 1978, the Governments of the United States and the Kingdom of the Netherlands signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production and procurement of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MOU.

2. MAJOR PRINICPLES

A. The U.S. Department of Defense (DoD) and the Ministry of Defense of the Netherlands (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

B. It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed procurement procedures and regulations. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning, intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MOU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. DoD and MoD agree that the following measures shall be taken, recognizing that among other factors, delivery date requirements for supplies, the interest of security and the timely conduct of the procurement process, are considerations related to insure free and full competition for the award of contracts:

A. Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

B. Ensure that their respective research and development offices and institutes are familiar with the principles and objectives of this MoU.

C. Ensure that their respective procurement offices are familiar with the principles and objectives of this MoU.

D. Ensure wide dissemination of the basic understanding of this MoU to their respective industries producing and/or developing defense items and/or services.

E. Ensure that, consistent with national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers, either price differentials under buy-national laws and regulations, or the cost of import duties. Full consideration will be given to all qualified industrial and/or governmental sources in each other's country. Provisions will be made for duty-free entry certificates and related documentation to the extent that existing laws and regulations permit.

F. Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to maximize industrial participation.

G. Review defense items and requests for services submitted by the other country as candidates for respective requirements. Identify requirements and proposed purchases to the other country in a timely fashion to ensure that the industries of such country are afforded adequate time to be able to participate in the research and development production and procurement processes.

H. Use best efforts to assist in negotiating licenses, royalties, and technical information exchanges among their respective industries, and research and development institutes.

I. Ensure that those items and services excluded from consideration under this MoU for reasons of protecting national requirements, such as the maintenance of a defense mobilization base, are limited to a small percentage of total annual defense procurement spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on procurement from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

J. Insure that the balance of reciprocal purchases takes into consideration the levels of technology involved, as well as the monetary value of purchase hereunder.

K. DoD and MoD will from time to time arrange visits in order to actively explore possibilities for cooperation on research and development, procurement, and logistical support.

4. COUNTING PROCEDURES

The following purchases, to be identified jointly by DoD and MoD will be included in the counting procedures:

A. Purchases of items and services funded from appropriate funds of the U.S. Department of Defense or budgeted funds of the Netherlands Ministry of Defense and which, either/are:

(1) directly purchased by the MoD or DoD from one another; or

(2) directly purchased by the MoD or DoD from the industry of the other country; or

(3) purchased by the industry of one country from the Government or industry of the other country; or

(4) purchased as a result of jointly funded defense projects to which the United States and the Netherlands are the only contributors to be credited in proportion to each other country's financial contribution to the project, and to work carried out in each country. The extent to which such purchases will be counted against the goals of the MoU will be agreed upon between MoD and DoD in each case;

(5) license fees, royalties and other associated income, when separately contracted, by industry and/or DoD or MoD with a licensor in the other country.

B. Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

C. Purchases by a third country government from the MoD or DoD or from industries of these two countries as direct result of the efforts of the government of the other country.

5. ADMINISTRATION

A. Each government will designate points of contact (procurement and logistics) at the Ministry of Defense level and in each purchasing service/agency and major acquisition activity.

B. Quality Assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reserve concerning reimbursement) will apply, unless other provisions are mutually agreed to on any specific contract. Reimbursement of services provided shall be afforded in accordance with the national laws and regulations of each country.

C. The terms of reference of the Netherlands/United States Committee of Procurement Cooperation is contained in Annex III.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 22 December 1978	Date 22 December 1978

(Appendices to Annex 1 not included)

ANNEX II

Principles Governing Logistic Support of Common Equipment

In implementing Article I, para 13, of the MoU, the two Parties shall be governed by the following:

1. When developing or procuring defense equipment, both Parties will agree upon the basis for joint follow-on logistic support in areas such as configuration control, interchangeability of spare parts/components, maintenance, conversion, storage, and spare parts provisioning, etc.

2. Arrangements and procedures will be established concerning follow-on logistic support and other forms of logistic cooperation, e.g., joint utilization of facilities.

3. In the contracting procedure for logistic support, paragraph 9 of Article I of the MoU shall apply.

4. Both Parties will issue directives and guidelines to their respective armament and logistics agencies to achieve the described goals of this MoU.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

ANNEX III

TERMS OF REFERENCES

1. The Netherlands/U.S. Committee for Procurement Cooperation (hereafter to be called "the Committee") will serve, under the direct responsibility of the authorities, listed in Article II sub 2 and 3 of the MoU respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring that the guiding principles of the MoU governing the mutual cooperation in research and development, production, procurement and logistic support of conventional defense equipment are being implemented to facilitate a mutual flow of defense equipment. To this end the Committee will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

A. They will discuss research, development, production, procurement and logistic support needs of such country and the likely areas of cooperation including joint activities in those fields.

B. They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

C. They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

D. They will consider any other matters relevant to the MoU.

E. They will report after each meeting and advise as appropriate.

F. The Committee will alternately meet in the United States and in the Netherlands. The country in which a particular meeting will take place will provide the Chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of the Netherlands
Dr. William J. Perry	Lt. General Hensen
Date 21 December 1978	Date 21 December 1978

6-1406.5 MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL MINISTER OF DEFENSE OF THE FEDERAL REPUBLIC OF GERMANY AND THE SECRETARY OF DEFENSE OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES COVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

The Secretary of Defense of the United States of America and the Federal Minister of Defense of the Federal Republic of Germany:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the resources allocated to defense; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technology capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding; and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in conventional defense equipment research and development, production, procurement and logistic support.

The Parties hereto conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance. In so doing, the Parties are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations. They therefore agree that in the event of a possible conflict between understandings entered into between the IEPG and the Government of the United States, and this Memorandum of Understanding, the Parties hereto will consult with a view to amending this Memorandum of Understanding.

The Parties further agree that this Memorandum of Understanding should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE 1

Principles Governing Mutual Defense Cooperation

1.1 Both Parties intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

1.2 This Memorandum of Understanding is intended to cover areas in which, in the view of both parties to the Agreement, bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement and logistic support. This cooperation is intended to complement the work of the Conference of National Armament Directors (CNAD) and the Independent European Program Group (IEPG).

1.3 Each Party may propose to the other any particular project that might be suitable for cooperation or for use by the other Party.

1.4 Both Parties will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production, procurement and logistic support which are intended to optimize Alliance standardization and/or interoperability.

1.5 In the interests of standardization within the Alliance and the effective utilization of scarce resources, both Parties shall, to the extent possible, select qualified defense items that have been developed and produced in the other country to meet their requirements. Necessary decisions should be taken on the basis of joint comparative trials according to criteria to be jointly established.

1.6 Both Parties will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

1.7 Both Parties will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described herein.

1.8 The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duty; customs and import duties should not be charged as far as this is admissible under current laws.

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Party for performance, quality, delivery and costs.

1.9 Competitive contracting procedures shall normally be used in acquiring items of conventional defense equipment developed or produced in each other's country for use by either country's defense establishment.

1.10 Both Parties will ensure that the technical data packages (TDPs) made available under this Memorandum of Understanding are not used for any purpose other than for the purpose of bidding on, and performing, a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferee without the prior written consent of the originating Party.

1.11 Both Parties will undertake their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two contracting parties will mutually make available to each other, to the extent possible, all information and proprietary rights required to implement cooperation under this agreement. The two contracting parties will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements, between the industries of the two countries.

1.12 Arrangements and procedures will, at the request of the purchasing Party, be established concerning follow-on logistic support for items of defense equipment acquired pursuant to this Memorandum of Understanding.

Both Parties will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

2.1 The DoD and MoD will appoint representatives to determine in detail the procedures for implementing this Memorandum of Understanding and the terms of reference for a German-American Committee for Mutual Cooperation.

2.2 The Under Secretary of Defense for Research and Engineering will be the responsible authority of the United States Department of Defense for the development of implementing procedures under this Memorandum of Understanding.

2.3 The Director General of Armaments in the Ministry of Defense will be the responsible authority of the Ministry of Defense of Germany for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

3.1 Implementation of this Memorandum of Understanding will involve full industrial participation. Primary responsibility for finding business opportunities shall rest with the industries of each country.

3.2 Each Party will be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Parties will take all appropriate implementing guidance. Both Parties will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

3.3 Also, the Parties will arrange to familiarize their respective procurement and requirements offices with the principles and objectives enunciated herein.

ARTICLE IV

Security

4.1 The operating procedures for the implementation of the General Security of Information Agreement dated 23 December 1960 between the two Parties, with particular reference to industrial security, apply to activities under this Memorandum of Understanding.

4.2 To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classified by either Party for security purposes, the other Party shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Party throughout the period during which the classifying Party may maintain such classification.

4.3 Information that has been provided by either of the Parties to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Party will mark such information furnished with a legend indicating the origin of information, that the information relates to the MOU and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

5.1 Each Party will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

5.2 The German-American Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Party to review progress in implementing the Memorandum of Understanding. It will discuss development, production, procurement and logistic support needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this Memorandum of Understanding.

ARTICLE VI

Duration

6.1 This Memorandum of Understanding will remain in effect for a six-year period following its signing. Unless otherwise agreed by both Parties, the duration will be extended for another six years.

6.2 If, however, either Party considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the six-year period, or any extension thereof, written notification of its intention will be given to the other Party six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Party to enable the Parties fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the Parties, any contract entered into consistent with the terms of this Memorandum of Understanding shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VII

Implementation

7.1 Each Party must agree in writing to any amendment of this Memorandum of Understanding.

7.2 Details pertaining to implementation of the principles set forth herein will be set out in annexes to this Memorandum of Understanding.

7.3 Any differences of opinion over the interpretation and implementation of this Agreement and its Annexes shall be resolved by consultation between the DoD and MoD.

7.4 This Memorandum of Understanding will come into effect on the date of the last signature.

The Secretary of Defense of the United States of America	The Federal Minister of Defense of the Federal Republic of Germany
Harold Brown	Hans Apel
Date October 17, 1978	October 17, 1978

6-1406.6 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF ITALY AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION AND PROCUREMENT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Italy, hereinafter referred to as "the Governments":

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, production, procurement, and logistic support of defense equipment, in order to:

- Make the most cost-effective and rational use of the funds allocated to defense to the extent permitted by their national policies, assuring the most satisfactory level of reciprocal balance; and

- Promote the widest possible use of standard or interoperable equipment; and

- Develop and maintain an advanced technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Agreement;

Noting that no agreement covers harmonization of mutual procurements, although specific offset agreements have existed between them in the past, and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding (MOU) sets out the guiding principles governing mutual cooperation in defense equipment research and development, production, procurement and logistic support.

The Government of the United States of America and the Government of Italy conclude this Memorandum of Understanding to strengthen the North Atlantic Alliance.

The two Governments agree that this Memorandum of Understanding should be incorporated in the larger context of the cooperation between Europe and North America within the Alliance.

All agreements, or the relevant provisions contained therein, between the Independent European Program Group (IEPG) and the United States of America, shall take precedence over this Memorandum of Understanding, provided that Italy is a party to the specific agreement.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments will take immediate steps to achieve and maintain an equitable balance in their exchanges, in terms of the value of contracts and technological levels, to the maximum practicable extent consistent with their national policies. An equitable balance, in principle, shall be achieved when the two Governments have implemented all practicable means at their disposal to maximize defense R&D cooperation and reciprocal procurement to the extent compatible with the nature of each country's technological and industrial base. Items procured under offset agreements by either Government with an industry of the other

will apply to the achievement of the balance contemplated by this agreement.

2. This agreement is intended to cover areas in which possible bilateral cooperation could be achieved in conventional defense equipment research and development, production, procurement, and logistic support complementing the work of the Conference of National Armament Directors (CNAD), Senior NATO Logisticians Conference (SNLC) and the Independent European Program Group (IEPG).

3. The two Governments will, consistent with their laws and regulations give full consideration to all requests for cooperative R&D and to all requests for production and procurement which are intended to maximize Alliance standardization and/or interoperability.

4. The two Governments shall, in the spirit of cooperation, mutually determine the counting procedures that will apply to all items under this agreement (and associated services included in a contract) purchased either directly by the two Governments or through their defense industries.

5. In the interests of standardization and the effective utilization of scarce resources the two Governments shall, if possible, select qualified defense items that have been developed and produced in the other country to meet their requirements in accordance with the procedures of paragraph 9 below.

6. Each Government may propose to the other any particular item of defense equipment that might be suitable for use by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of the aims described in paragraph 5.

8. Barriers to procurements or coproduction of an item of defense equipment that has been developed in the other country shall be removed, insofar as laws and regulations permit, such as not applying customs duties and other discriminatory levies in evaluating bids submitted in accordance with this MOU, as well as the waiver of protectionist provisions. Defense items or services are those items or services which may be procured utilizing appropriated funds of the US Department of Defense or budgeted funds of the Italian Ministry of Defense.

9. Competitive contracting procedures normally shall be used in acquiring items of conventional defense equipment developed in each other's country.

10. Full consideration will be given to all qualified industrial and/or Government sources in each other's country consistent with the national procurement policy and criteria. It is therefore understood that items offered shall satisfy requirements for performance, quality, delivery and cost.

11. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations, and arms transfer policy. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the extent to which a proposed transfer may damage or infringe upon licensing arrangements whereby commercial firms in the US or Italy have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third-country.

13. Each Government will ensure that the technical data packages (TDPs) made available under this MOU are not used for any purpose other than for the purpose of bidding on, and performing a prospective defense contract without the prior agreement with those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDPs be transferred to any third country or any other transferees without the prior written consent of the originating Government.

14. Both Governments will undertake their best efforts to assist in negotiating licenses, ties and technical information exchanges with their respective industries.

15. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Understanding. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this Memorandum of Understanding. Terms of reference will be proposed for an Italian-American Committee for Mutual Cooperation, including rules governing its work. The implementing procedures under this Memorandum of Understanding shall be an integral part thereof.

2. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logistics, the Director, Defense Security Assistance Agency, and other appropriate Department of Defense officials, will be responsible in the United States Government for the development of implementing procedures under this Memorandum of Understanding.

3. The National Armament Director in the Ministry of Defense, in coordination with the other appropriate governmental bodies, will be the responsible authority of the Government of Italy for the development of implementing procedures under this Memorandum of Understanding.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the defense industries within its country the basic understanding of this Memorandum of Understanding, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the defense industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this Memorandum of Understanding will involve full industrial participation. Accordingly, the Governments will arrange to familiarize their respective procurement and requirements offices with the principles and objectives of this Memorandum of Understanding. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industrial participants of each country.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by either Government for security

purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. The operating procedures for the implementation of the General Security Information Agreement dated 4 August 1964 between the United States Department of Defense and the Italian Ministry of Defense apply to activities under this Memorandum of Understanding.

3. Information that has been provided by the GOI to the United States in confidence, or produced by the United States pursuant to a written joint arrangement with GOI requiring confidentiality, shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection against disclosure equivalent to that required by the GOI. To assist in providing the desired protection, the GOI will mark such information furnished to the US Government with a legend indicating that the information is of Italian Government origin, that the information relates to this MOU, and that the information is furnished in confidence.

ARTICLE V

Duration

1. This Agreement will remain in effect for a ten-year period following its signing. Unless otherwise agreed by both Governments, the duration will be extended for another ten years.

2. If, however, either Government considers it necessary for compelling national reasons to discontinue its participation under this Memorandum of Understanding before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of discontinuance. Such notification of intent would be a matter of immediate consultation with the other Government to enable the Government fully to evaluate the consequences of such termination and in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the Memorandum of Understanding may be terminated by the parties, any contract entered into consistent with the terms of this agreement shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VI

Administration

1. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency.

2. Government representatives will meet as agreed or at the request of either Government to review progress in implementing the Memorandum of Understanding. They will discuss development, production and procurement needs of each country and the likely areas of cooperation; agree to the basis of, and keep under review and promoting any correction step, the financial statement referred to below; and consider any other matters relevant to the Memorandum of Understanding.

3. An annual United States/Italy statement of the current balance, and long-term trends of R&D cooperation and purchases between the two countries will be prepared on a basis to be mutually agreed. Such statement will take account of any United States/Italy offset agreements in force when the Memorandum of Understanding was signed and will be reviewed during the meetings referred to in paragraph 2 above.

ARTICLE VII

Annexes

Annexes negotiated by the responsible offices and approved by the appropriate Government authorities will be incorporated in this agreement and made an integral part thereof.

ARTICLE VIII

Implementation

1. The arrangements contained in this Memorandum of Understanding represent the understanding reached between the Government of the United States of America and the Government of Italy upon the matters referred to herein. Each Government must mutually agree to any amendment of this Memorandum of Understanding.

2. This agreement, in two original texts in the Italian and English languages, both texts being equally authentic, will come into effect at the date signed by both Governments.

For the United States Government	For the Government of the Italian Republic
Harold Brown	Attilio Ruffini
Date 11 September 1978	11 September 1978

6-1406.7 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF PORTUGAL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of Portugal, duly represented by their Ministers of Defense:

Intending to increase their respective defense capabilities through more efficient cooperation in the field of research, development, production, procurement, and logistic support in order to:

- Make the most cost-effective and rational use of the resources available for defense,
- Ensure the widest possible use of standard or interoperable equipment,
- Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to this Memorandum of Understanding (MOU), and

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies.
This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement, and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and the effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified defense items that have been developed or produced in the other country to meet their requirements.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by natonal laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Portugal-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Director General of Armaments and the Secretary of State for Light Industry will be the responsible authorities of the Government of Portugal for the development of implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of the relevant industries within its territory the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this Memorandum of Understanding are classified by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification

designation, that shall ensure a degree of protection against disclosure equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information, that the information relates to the "Memorandum of Understanding" and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Portugal-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement needs of each nation and the likely areas of cooperation; agree to the basis of and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Portugal statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	For the Government of Portugal The Minister of Defense
Harold Brown	José Alberto Loureiro dos Santos
Date 28 March 1979	18 December 1978

ANNEX I

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING IMPLEMENTATION

1. INTRODUCTION

On 28 March 1979, the Government of the United States and the Government of Portugal signed a Memorandum of Understanding (MoU) relating to the principles governing mutual cooperation in research and development, production, procurement, and logistic support of defense equipment. This document sets forth the agreed implementing procedures for carrying out the MoU.

2. MAJOR PRINCIPLES

2.1 The U.S. Department of Defense (DoD) and the Ministry of Defense of Portugal (MoD) will consider for their defense requirements qualified defense items and services developed or produced in the other country.

2.2 It will be the responsibility of government and/or industry representatives in each country to acquire information concerning the other country's proposed research, developments, and purchases and to respond to requests for proposals in accordance with the prescribed acquisition procedures and regulations of the purchasing nation. However, the responsible government agencies in each country will assist sources in the other country to obtain information concerning intended research and development, proposed purchases, necessary qualifications and appropriate documentation.

3. ACTION

DoD and MoD will review and, where considered necessary, revise policies, procedures and regulations to ensure that the principles and objectives of this MoU, which are intended to be compatible with the broad aims of NATO Rationalization/Standardization, are taken into account. Recognizing that factors such as delivery date requirements for supplies, the interests of security, and the timely conduct of the contracting process are considerations, DoD and MoD agree that the following measures will be taken to ensure free and full competition for the award of contracts:

3.1 Ensure that their respective requirements offices are familiar with the principles and objectives of this MoU.

3.2 Ensure that their respective research and development offices are familiar with the principles and objectives of this MoU.

3.3 Ensure that their respective acquisition offices are familiar with the principles and objectives of this MoU.

3.4 Ensure wide dissemination of the basic understanding of this MoU to their respective defense industries.

3.5 Ensure that, to the extent permitted by national laws and regulations, offers of defense items produced in the other country will be evaluated without applying to such offers either price differentials under buy-national laws and regulations, or the cost of import duties. Provisions will be made for duty-free entry certificates and related documentation to the extent consistent with national laws and procedures.

3.6 Assist industries in their respective countries to identify and advise the other government of their production capabilities and assist such industries in carrying out the supporting actions to optimize industrial participation.

3.7 Review defense items and requests for services submitted as candidates for respective requirements. Identify requirements and proposed purchases in a timely fashion to ensure adequate time for their industries to participate in the acquisition process.

3.8 Make best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries.

3.9 Permit the sales of equipment produced under license to Allied countries, and to appropriate third countries, subject to the policy outlined in Article I, paragraph 12 of the basic MoU. Each agreement for a joint development or coproduction will address transfers of items or technology to Allied or third countries.

3.10 Ensure that those items and services excluded from consideration under this MoU for reasons of protecting overriding national requirements, such as the maintenance of a defense mobilization base (Appendix 1), are limited to a small percentage of total annual defense acquisition spending. It is intended that such defense items and services, as well as those items and services that must be excluded from consideration under this MoU because of legally imposed restrictions on acquisition from non-national sources, be identified as soon as possible by the MoD and the DoD, and that such defense items and services be kept under review at this level.

3.11 Ensure that the balance of reciprocal purchasing within the areas of this MoU take into consideration the levels of technology involved, as well as the contractual value, in accordance with the policy outlined in Article 1, paragraph 1 of the basic MoU.

3.12 Arrange visits between appropriate government personnel from time to time in order actively to explore possibilities for acquisition and logistic support.

4. COUNTING PROCEDURES

4.1 The purchases to be counted against the goals of the MoU will be identified jointly by DoD and MoD. In principle, all defense items or components thereof, as defined in the basic MoU, and associated services included in a procurement contract, purchased by MoD and DoD from the other country will be counted against the goals of the MoU as long as such purchases meet the following criteria:

4.1.1 Direct purchases by the MoD and DoD, including their respective agencies, one from the other.

4.1.2 Purchases by either the MoD or DoD from the industry of the other country.

4.1.3 Purchases by industry from the Government or industry of the other country in the framework of Government defense contracts.

4.1.4 Purchases by a third country government from either US or Portuguese Government or industrial sources as a direct result of commercial efforts of the other, non-supplying country.

4.1.5 Acquisitions by either country of defense items resulting from common funded projects to which the US and Portugal are contributors, to be credited in proportion to each country's financial contribution to the project, and to work carried out in each country. The extent to which such acquisitions will be counted against the goals of the MoU will be, at the time of procurement, mutually agreed between MoD and DoD on a case-by-case basis.

4.1.6 License fees, royalties and other associated income resulting from orders placed by DoD or MoD and/or industry in one country with a licensed company in the other country; or in MoD-DoD transactions.

4.2 The following non-defense items also will be counted against the goals of the MoU:

4.2.1 Purchases by the MoD or DoD from the industry of the other country, on behalf of other governmental departments and agencies.

4.2.2 Purchases by a third country government from the MoD or DoD or from industries of these two countries as a direct result of the efforts of the MoD/DoD of the other country.

5. ADMINISTRATION

5.1 Each country will designate points of contact at the Ministry of Defense level.

5.2 MoD and DoD representatives will meet periodically, alternately in each country, to review the projects undertaken in implementing the MoU. They will discuss acquisition and logistic support needs of each country and the likely areas of cooperation; they will update the financial statement referred to in paragraph 5.3 below as a means of judging the progress of activity in the period under review; and they will consider other matters relevant to this MoU. Specific tasks of the representatives are:

5.2.1 Review the status of acquisitions on the basis of the data available concerning such acquisitions, in comparable terms to be agreed upon by both Parties.

5.2.2 Consider additional steps necessary to facilitate the actions called for in paragraph 3.

5.3 An annual US/Portugal statement consolidating the current balance of defense equipment acquisition and logistic support between the two countries, as well as the long term trends, will be prepared on a basis to be mutually agreed.

5.4 Quality assurance procedures outlined in STANAG 4107 and 4108 (subject to the USG reservation concerning US reimbursement) will apply unless other provisions are mutually agreed to on any specific contract. Reimbursement for services provided shall be in accordance with national laws and regulations of each country.

5.5 This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares
	Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX II

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING MUTUAL COOPERATION IN DEFENSE EQUIPMENT RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT, DATED 28 MARCH 1979.

PRINCIPLES GOVERNING LOGISTIC SUPPORT OF COMMON EQUIPMENT

In implementing Article 1, paragraph 14 of the MoU, the two Governments shall be governed by the following:

1. When developing or procuring defense equipment, both Governments will agree upon the basis for joint follow-on logistic support in areas such as configuration control; interchangeability of assemblies, components and spare parts; maintenance; conversion; storage, spare parts provisioning; etc.

2. Arrangements and procedures for logistic support, paragraph 9, Article 1 of the MoU normally shall apply.

4. Both Governments will issue directives and guidelines to their respective armaments and logistics agencies to achieve the described goals of this MoU.

5. This annex will come into effect on the date of the last signature.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares
	Cardoso Cunha
Date 7 July 1980	12 December 1979

ANNEX III

TO THE MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF PORTUGAL CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH AND DEVELOPMENT, PRODUCTION, PROCUREMENT, AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT, DATED 28 MARCH 1979.

TERMS OF REFERENCE

1. The Portugal/U.S. Committee for Mutual Cooperation (hereafter to be called "the Committee") will serve under the direct responsibility of the authorities listed in Article II, sub 2 and 3 of the MoU, respectively, as the main body in charge of the adequate implementation of the MoU.

2. In particular, the Committee will be responsible for ensuring implementation of the MoU governing the mutual cooperation in research and development, production, acquisition and logistic support of conventional defense equipment. To this end the Committee members will meet as required, but not less than annually, to review progress in implementing the MoU. In this review:

2.1 They will discuss research, development, production, acquisition, and logistic support needs of each country and the likely areas of cooperation, including joint activities in those fields.

2.2 They will exchange information as to the way the stipulations of the MoU have been carried out and, if need be, prepare proposals for amendments of the MoU and/or its annexes.

2.3 They will agree to the financial statement of the current balance, give guidance for its yearly preparation and formulate conclusions from it, such conclusions to include any long term trends which may be established.

2.4 They will consider any other matters relevant to the MoU.

2.5 They will report after each meeting and advise as appropriate.

2.6 The Committee will alternately meet in the United States and in Portugal. The country in which a particular meeting will take place will provide the chairman and the secretariat for that meeting.

For the Government of the United States of America	For the Government of Portugal National Armament Director & Ministry of Sec. State Industry
William J. Perry	Brig. Jose Maria da Costa Alvares
	Cardoso Cunha
Date 7 July 1980	12 December 1979

6-1406.8 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF BELGIUM AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Government of the Kingdom of Belgium duly represented by their Ministers of Defense:

> Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:
>
> - Make the most cost-effective and rational use of their respective resources allocated to defense,
> - Promote the widest possible use of standard or interoperable equipment,
> - Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU),

Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment, and

Mindful of the objectives described in Art. 3 of the North Atlantic Treaty and para. 4 of the final communique of the North Atlantic Summit Council of May 1977 with regard to Alliance cooperation in view of safeguarding Western security,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment. The conclusion of this MOU does not preclude other specific agreements for cooperation in developing, producing, or co-producing, as appropriate, items of defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. The two Governments further agree that this MOU should be viewed in the larger context of the cooperation within the Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements among the individual member nations.

The parties hereto also agree that in the event of a possible conflict between this MOU and other agreements, they will consult with a view to amending this MOU.

ARTICLE I

Principles Governing Reciprocal Defense Cooperation

1. a. Both Governments intend to facilitate the mutual flow of defense procurement for their armed forces, aiming at a long term equitable balance in their exchanges, taking into consideration the relative technological level of such procurement, and consistent with their national policies.

b. Both Governments will make their best efforts to facilitate defense R&D cooperation, coproduction of defense equipment and provision of opportunities to compete for procurement of defense services and equipment to include components, subsystems, spare parts and major systems at all technological levels.

c. A long term equitable balance will not imply an equal monetary flow of defense procurement, but will take into account each country's financial, industrial, economic and commercial possibilities.

d. In order to assess the mutual flow of defense articles and services, the two Governments will jointly determine the counting procedures to be set down in an annex to this MOU that will apply to all defense articles and defense services purchased by them directly or through their respective industries under this MOU.

2. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to optimize standardization and/or interoperability within the Alliance. They will do likewise with regard to offers of services.

3. In the interests of standardization and the effective utilization of scarce resources, the two Governments will, to the extent possible, select qualified defense articles and defense services that have been developed or produced in the other country to meet their requirements, in accordance with the procedures of paragraph 7 below. Defense articles or defense services are those articles or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Belgian Ministry of Defense.

4. Each Government will from time to time notify the other Government of defense articles and services that may only be acquired by the notifying Government from domestic sources, as well as those defense articles and services that may be particularly suitable for acquisition by the other Government. Indicative lists of the latter will be provided in an annex to this MOU.

5. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

6. Competitive contracting procedures will normally be used in acquiring defense articles developed or produced in or defense services provided by each country for use by the other country's defense establishment.

7. The detailed implementing procedures to be agreed will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals of defense articles produced in or defense services provided by each country will be evaluated without applying price differentials under buy-national laws and regulations, and without applying the cost of applicable import duties. In the event that either party can no longer comply with the exemption from import duties, the parties hereto will consult with a view to amending this MOU;

b. Each country will give full consideration to all qualified sources in the other country. In addition, each country will give full consideration to all applications for qualification by sources in the other country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government concerning performance, quality, delivery and costs;

d. Provisions for duty-free certificates and related documentation;

e. Arrangements concerning quality control and audits of incurred costs and price proposals.

8. Both Governments will review defense articles and defense services submitted as candidates for their respective requirements. They will indicate requirements and proposed purchases in a timely fashion, in accordance with national regulations, to ensure adequate time for their respective industries to qualify for eligibility and to submit a bid or proposal.

9. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on or performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights, and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

10. a. Transfers to third parties of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the prior written agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

b. Each Government will base its decisions regarding requests by the other for agreement to third party transfers on its laws, regulations and defense policies. Each Government will use the same criteria for proposed transfers by the other as it uses for itself, and will not reject, solely in the pursuit of its own national commercial advantage, a request from the other for a third country transfer of such defense articles or technical data. Third country transfers approved in accordance with this agreement will count in the calculation of the balance of exchanges as a purchase by the Government authorizing the transfer.

c. Consistent with the above, in carrying out its own transfers to third countries, each Government shall take into consideration the exent to which a proposed transfer may damage or infringe upon known licensing arrangements whereby commercial firms in the US or Belgium have granted to firms in the other country licenses for the manufacture of the articles proposed to be transferred to a third country.

11. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights. The two Governments will mutually make available to each other, to the extent possible and in a timely fashion, all information and the proprietary rights required to implement cooperation under this MOU. The two Governments will, to the extent feasible, seek appropriate agreement with their industries that in the interest of standardization and armaments cooperation, proprietary rights in defense-relevant information and data can be transferred by appropriate arrangements and on fair and reasonable terms, between the industries of the two countries.

12. Arrangements and procedures will, at the request of the purchasing Government, be established concerning follow-on logistic support for items of defense equipment covered by this MOU. Both Governments will make their defense logistic system and resources available for this purpose if required and mutually agreed.

ARTICLE II

Implementation Procedures

1. Mutually agreed implementing procedures for this MOU will be established and be a part thereof.

2. Representatives of the two Governments will be appointed as the responsible authorities for the implementation of this MOU. The Under Secretary of Defense for Research and Engineering will be the representative for the United States Government. The National Armaments Director will be the representative for the Government of Belgium.

3. The establishment of a Belgian-United States Committee for Mutual Cooperation and its rules of procedure and competence will be agreed upon in an annex to be made a part of this MOU.

4. Each Government will designate points of contact at the Ministry of Defense level and in the procurement offices under the Ministry of Defense. They will be listed in an annex to be made a part of this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its respective industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that their industries comply with the regulation pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve maximum industrial participation. Accordingly, the Governments will arrange that their respective acquisition and requirements offices be made familiar with the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas covered by this MOU shall rest with the industries in each country.

ARTICLE IV

Security

The General Security of Information Agreement, dated 9 August 1960 and the Agreement for Security Procedures for Industrial Operations, dated 24 July 1979, between the two Governments, apply to activities under this Memorandum of Understanding.

ARTICLE V

Annual Statement

An annual United States - Belgium statement of the current balance and long-term trends of R&D cooperation, procurement, maintenance and logistic support of defense equipment between the two nations will be prepared on a basis to be mutually agreed in an annex to this MOU and reviewed during the meetings of the Belgian - United States Committee for Mutual Cooperation, in accordance with its terms of reference.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate government authorities will be incorporated into this MOU and become an integral part thereof as of the date of the last signature.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period. Unless the Governments mutually decide otherwise, the duration will be extended for successive five-year periods.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or of any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the two Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to agree upon such actions as are necessary to alleviate problems that may result from the termination.

3. Although the MOU may be terminated by the parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

1. The agreements in this MOU represent the understanding reached between the Government of the United States of America and the Government of the Kingdom of Belgium upon the matters referred to herein. Each Government may propose amendments; both Governments must agree in writing to any amendment of this MOU.

2. Any difference of opinion over the interpretation and implementation of this MOU and its annexes will be resolved by consultation between the two Governments.

3. This MOU, in three original texts in the English, French and Dutch languages, all three texts being equally authentic, will come into effect on the date of the last signature.

For the Government of the United States of America The Secretarv of Defense	For the Government of the Kingdom of Belgium The Minister of Defense
Harold Brown	Jose Desmarets
Date 12 December 1979	12 December 1979

BEST DOCUMENT AVAILABLE

6-1406.9 MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE KINGDOM OF DENMARK AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN THE RESEARCH, DEVELOPMENT, PRODUCTION, PROCUREMENT AND LOGISTIC SUPPORT OF DEFENSE EQUIPMENT.

PREAMBLE

The Government of the United States of America and the Kingdom of Denmark duly represented by their Ministers of Defense:

> Intending to increase their respective defense capabilities through more efficient cooperation in the fields of research, development, production, procurement and logistic support in order to:
>
> - Make the most cost-effective and rational use of the resources available for defense,
> - Ensure the widest possible use of standard or interoperable equipment,
> - Develop and maintain an advanced industrial and technological capability for the North Atlantic Alliance, and particularly with respect to the parties to this Memorandum of Understanding (MOU), and
>
> Seeking to improve the present situation and to strengthen their military capability and economic position through the further acquisition of standard or interoperable equipment,

Have entered into this Memorandum of Understanding in order to achieve the above aims.

This Memorandum of Understanding sets out the guiding principles governing mutual cooperation in research, development, production, procurement and logistic support of conventional defense equipment.

The two Governments conclude this MOU to strengthen the North Atlantic Alliance. In so doing, the Governments are fully aware that the Independent European Program Group (IEPG) wants to enhance equipment collaboration by more comprehensive and systematic arrangements. They therefore agree that in the event of a possible conflict between agreements entered into between the IEPG and the Government of the United States, and this MOU, the parties hereto will consult with a view to amending this MOU.

The two Governments further agree that this MOU should be viewed in the larger context of the cooperation between Europe and North America within the Alliance.

ARTICLE I

Principles Governing Mutual Defense Cooperation

1. Both Governments intend to facilitate the mutual flow of defense procurement, taking into consideration relative technological levels of such procurement, and consistent with their national policies. This facilitation shall be sought through the provision of opportunities to compete for procurements of defense equipment and services as well as through the coproduction of defense equipment and defense R&D cooperation.

2. This MOU is intended to cover areas in which possible bilateral cooperation could be achieved in research, development, production, procurement and logistic support of conventional defense equipment, complementing the work of the Conference of National Armament Directors (CNAD), the Independent European Program Group (IEPG), and the Senior NATO Logisticians Conference (SNLC).

3. The two Governments will, consistent with their relevant laws and regulations, give the fullest consideration to all requests for cooperative R&D, and to all requests for production and procurement which are intended to enhance standardization and/or interoperability within the Alliance.

4. In the interests of standardization and effective utilization of scarce resources, the two Governments shall, to the extent possible, adopt qualified and cost-effective defense items that have been developed or produced in the other country to meet their requirements. Defense items or services are those items or services which may be procured utilizing appropriated funds of the U.S. Department of Defense or budgeted funds of the Danish Ministry of Defense.

5. The two Governments shall mutually determine the counting procedures to be laid down in an Annex to this MOU that will apply to all defense items and defense services purchased by them directly or through their relevant industries under this MOU.

6. Each Government shall from time to time notify the other Government of defense items that may not be acquired by the notifying Government from other than domestic sources, as well as those defense items that may be particularly suitable for acquisition by the other Government.

7. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense acquisition organizations to facilitate achievement of the aims of this MOU.

8. Competitive contracting procedures shall normally be used in acquiring items of defense equipment developed or produced in each other's country for use by either country's defense establishment.

9. The detailed implementing procedures, to be agreed, will, consistent with and to the extent permitted by national laws and regulations, incorporate the following:

a. Offers or proposals will be evaluated without applying price differentials under buy national laws and regulations and without applying the costs of import duties;

b. Full consideration will be given to all qualified industrial and/or governmental resources in each other's country;

c. Offers or proposals will be required to satisfy requirements of the purchasing Government for performance, quality, delivery, and costs.

10. Both Governments will review items submitted as candidates for respective requirements. They will indicate requirements and proposed purchases in a timely fashion to ensure adequate time for their respective industries to qualify for eligibility and submit a bid or proposal.

11. Each Government will ensure that the technical data packages (TDP's) made available under this MOU are not used for any purpose other than for the purpose of bidding on and performing a prospective defense contract, without the prior agreement of those owning or controlling proprietary rights and that full protection shall be given to such proprietary rights, or to any privileged, protected, or classified data and information they contain. In no event shall the TDP's be transferred to any third country or any other transferee without the prior written consent of the originating Government.

12. Third party transfers of defense articles or technical data made available under this MOU, and of articles produced with such data, will be subject to the agreement of the Government that made available the defense articles or technical data, except as otherwise provided in particular arrangements between the two Governments.

13. Both Governments will use their best efforts to assist in negotiating licenses, royalties and technical information exchanges with their respective industries or other owners of such rights.

14. Arrangements and procedures will, at the request of the purchasing government, be established concerning follow-on logistic support for items of defense equipment, purchased pursuant to this MOU. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

Implementing Procedures

1. Representatives of the two Governments will be appointed to determine in detail the procedures for implementing this MOU and the terms of reference for a Danish-U.S. Committee for Mutual Cooperation.

2. The Under Secretary of Defense for Research and Engineering will be the responsible authority in the United States Government for the development of implementing procedures under this MOU.

3. The Armaments Director in the Ministry of Defense will be the responsible authority of the Kingdom of Denmark for the development of the implementing procedures under this MOU.

ARTICLE III

Industry Participation

1. Each Government will be responsible for calling to the attention of its relevant industries the basic understanding of this MOU, together with appropriate implementing guidance. Both Governments will take all necessary steps so that the industries comply with the regulations pertaining to security and to safeguarding classified information.

2. Implementation of this MOU will involve full industrial participation. Accordingly, the Governments will arrange to inform their respective procurement and requirements offices concerning the principles and objectives of this MOU. However, primary responsibility for finding business opportunities in areas of research and development and production shall rest with the industries in each nation.

ARTICLE IV

Security

1. To the extent that any items, plans, specifications or information furnished in connection with the specific implementation of this Memorandum of Understanding are classifed by the furnishing Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classification.

2. Information that has been provided by either of the Governments to the other on condition that it remain confidential shall either retain its original classification designation, or be assigned a classification designation, that shall ensure a degree of protection against disclosure

equivalent to that required by the other Government. To assist in providing the desired protection, each Government will mark such information furnished with a legend indicating the origin of information that the information relates to the Memorandum of Understanding and Annexes thereto, and that the information is furnished in confidence.

ARTICLE V

Administration

1. The Danish-U.S. Committee for Mutual Cooperation, referred to in Article II above, will meet as agreed or at the request of either Government to review progress in implementing the MOU. They will discuss research and development, production and procurement and logistics support needs of each nation and the likely areas of cooperation; agree to the basis of, and keep under review, the financial statement referred to below; and consider any other matters relevant to this MOU.

2. Each Government will designate points of contact at the Ministry of Defense level and in each purchasing service/agency under the Ministries of Defense.

3. An annual United States-Denmark statement of the current balance, and long-term trends, of R&D cooperation and purchases between the two nations will be prepared on a basis to be mutually agreed.

ARTICLE VI

Annexes

Annexes negotiated by the responsible officials and approved by the appropriate Government authorities will be incorporated in this MOU and made an integral part thereof.

ARTICLE VII

Duration

1. This MOU will remain in effect for a ten-year period and will be extended for successive five-year periods, unless the Governments mutually decide otherwise.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOU before the end of the ten-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take

such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOU may be terminated by the Parties, any contract entered into consistent with the terms of this MOU shall continue in effect, unless the contract is terminated in accordance with its own terms.

ARTICLE VIII

Implementation

This MOU will come into effect on the date of the last signature.

For the Government of the United States of America The Secretary of Defense	The Kingdom of Denmark The Minister of Defense
Harold Brown	Poul Søgaard
Date 30 January 1980	Date 2 January 1980

6-1407 Reserved.

Part 15 - Purchases From Defense Cooperation Country Sources

6-1500 Scope of Part. This Part implements the defense cooperation agreements made by the United States pursuant to other than Foreign Military Sales agreements.

6-1501 Policy. In order to increase their respective defense capabilities through more efficient cooperation in the research and development, production, and acquisition of defense equipment, the United States and the Government of Israel have entered into a defense cooperation requirement (see 6-001). The purpose of this agreement is to promote the most cost-effective and rational use of defense appropriations of the United States and the defense cooperation country. Accordingly, it is Department of Defense policy to achieve the best possible coordination of the materiel programs between such countries and the United States and to ensure that sources in defense cooperation countries are provided the opportunity to compete on a fair and equal basis with U.S. sources for selected research and development, production and service contracts subject to the restrictions of 6-1402(b). Accomplishment of this policy requires the exemption of certain Buy National laws and foreign acquisition restrictions with respect to selected defense equipment purchased from defense cooperation country sources. For the purposes of solicitation and evaluation of such selected defense equipment, offers of Defense Cooperation country end products shall be treated as if they were participating country end products.

6-1502 Procedures for Purchases from Defense Cooperation Country Sources.

6-1502.1 Solicitation Procedures. Defense cooperation country sources shall be solicited as if they were sources from participating countries. The procedures set forth at 6-1403.1(a) shall apply.

6-1502.2 Submission of Offers. Defense cooperation country sources competing for DoD requirements must be responsive to the terms and conditions of DoD solicitations. The Buy American Act and the Balance of Payments Program restrictions are waived only for items listed in appropriate annexes to the agreements with the defense cooperation country. (See 6-1504.) However, the absence of an item from the defense equipment list is without prejudice to the authority of the Secretary to determine in any individual case that application of the restrictions of the Buy American Act and Balance of Payments Program restrictions to that item would be inconsistent with the public interest. Copies of these lists may be obtained from the Director for International Acquisition, OUSDRE(AP).

6-1502.3 Evaluation Procedures. Defense cooperation country offers shall be evaluated as if they were participating country offers. The procedures set forth at 6-1403.1(c)(2) shall apply.

6-1502.4 Other Procedures. Contracting procedures, industrial security procedures and contract administration procedures for defense cooperation country sources shall be conducted as if they were sources from participating countries. The procedures and policies set forth at 6-1403.3, 6-1404, 6-1405, and throughout this Regulation shall apply.

6-1503 Reserved.

6-1504 Defense Cooperation Country Agreements, Memoranda of Understanding and Accompanying Annexes. The following agreements, memoranda of understanding and annexes are provided for information purposes only. Determination and Findings have been executed by the Secretary of Defense waiving the application of the Buy American Act for items listed in the appropriate annexes in order to implement the agreements listed in this Part.

6-1504.1 MEMORANDUM OF AGREEMENT BETWEEN THE GOVERNMENT OF ISRAEL AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA CONCERNING THE PRINCIPLES GOVERNING MUTUAL COOPERATION IN RESEARCH AND DEVELOPMENT, SCIENTIST AND ENGINEER EXCHANGE, AND PROCUREMENT AND LOGISTIC SUPPORT OF SELECTED DEFENSE EQUIPMENT.

The following Agreement is provided for information purposes only.

PREAMBLE

The Government of the United States of America and the Government of Israel, hereinafter referred to as the Governments:

> Noting previous agreements on Data Exchange (signed on 22 December 1970) and the Production in Israel of U.S. Designed Defense Equipment (signed on 1 November 1971) and
>
> Intending to increase their respective defense capabilities through more efficient cooperation in the field of research and development, in order to:
>
> - Promote the cost-effective and rational use of funds allocated to defense to the extent permitted by their national laws and policies, and
> - Mutually benefit from selected research and development programs which satisfy each nation's defense needs in a cost effective manner, and
>
> Noting that Israel will continue to purchase large quantities of defense equipment from the United States and desiring to ameliorate the ensuing imbalance in defense trade between the two countries by affording Israeli sources improved opportunities to compete for agreed upon procurements of the U.S. Department of Defense (DoD)

have entered into this Memorandum of Agreement in order to achieve the above aims.

This Memorandum of Agreement (MOA) sets out the guiding principles governing mutual cooperations in conventional defense equipment research and development, and procurement and logistic support of agreed upon defense supplies and services.

ARTICLE 1

PRINCIPLES GOVERNING RECIPROCAL DEFENSE COOPERATION

1. The Governments intend to facilitate the accomplishment of the above-stated aims through cooperation in the research and development areas, and data exchange and scientist-engineer exchange programs, all as listed in Annex A hereto; and by affording each other's national sources improved opportunities to offer products and services identified in Annex B hereto. Items may be added to these annexes by agreement of the Governments. Items may be dropped from these annexes by either Government as its national policies require.

2. Both Governments, in the cases of purchases directly in support of the programs listed in Annex "A" and in the case of the items and services listed in Annex "B", will accord the following treatment to offers of services to be performed or supplies to be produced, in the other country:

a. These offers will be evaluated without applying price differentials resulting from Buy National laws and regulations.

b. To the extent permitted by law and regulation, these offers will be evaluated without consideration of the cost of duties and provisions will be made for duty-free certificates and related documentation.

c. Full consideration will be given to all qualified industrial and/or governmental sources of the other country for items or services listed in Annexes A and B consistent with the policies and criteria of the cognizant purchasing agencies, it being understood that such offers will be required to satisfy requirements of the purchasing organizations for performance, quality, delivery and costs.

d. The requirements of each Government's laws and regulations relating to purchases of property and services (including the requirements for obtaining competition for such purchases) shall be applicable to the implementation of this agreement.

3. Both Governments will provide appropriate policy guidance and administrative procedures within their respective defense procurement organizations to facilitate achievement of improved defense cooperations. Each Government will also be responsible for calling to the attention of the relevant industries within its country the basic understanding of this Memorandum of Agreement, together with appropriate implementing guidance.

4. Technical information, including Technical Data Packages (TDPs), furnished to the other Government or to persons in the other country for the purpose of offering or bidding on, or performing a defense contract shall not be used for any other purpose without the prior agreement of the originating Government as well as the prior agreement of those owning or controlling proprietary rights in such technical information. Each Government will ensure that full protection will be given by its officers, agents, and contractors to such proprietary, or to any privileged, protected or classified data and information they contain. Each Government will also undertake its best efforts to ensure compliance with the foregoing provisions on the part of other persons in its country. In no event shall such technical information or TDPs or products derived therefrom be transferred to any third country or any other third part transferee without the prior written consent of the originating Government.

5. Both Governments will undertake their best efforts to assist in negotiating licenses, royalties, and technical information exchanges with their respective industries, when the items in Annexes A and B require such efforts. Both Governments will also facilitate the necessary export licenses required for the submission of bids or proposals or otherwise required for the performance of Annexes A and B.

6. The transfer to third countries of material or technical information and of articles derived therefrom generated from the mutual cooperative programs included in this MOA is subject to case-by-case advance agreement of the originating Government.

7. Arrangements and procedures will be established concerning follow-on logistic support for items of defense equipment covered by this Memorandum of Agreement. Both Governments will make their defense logistic systems and resources available for this purpose as required and mutually agreed.

ARTICLE II

IMPLEMENTING PROCEDURES

A joint U.S. DoD-Israel MOD committee shall be established to prepare and update the annexes and attachment hereto for approval by the appropriate authorities of each Government and to periodically review the progress of implementation. The Under Secretary of Defense for Research and Engineering, in coordination with the Assistant Secretary of Defense for International Security Affairs, the Assistant Secretary of Defense for Manpower, Reserve Affairs and Logisitics, and other appropriate Department of Defense and State officials, will be responsible in the U.S. Government for the implementation of this MOA. The Director, General, Israel Ministry of Defense will be the responsible counterpart authority for the Government of Israel. Other duties to be assigned this committee and the frequency of their meetings shall be further defined in Attachment 1.

ARTICLE III

SECURITY

1. To the extent that any items, plans, specifications or information furnished in connection with specific implementation of this MOA are classified by either Government for security purposes, the other Government shall maintain a similar classification and employ all measures necessary to preserve such security equivalent to those measures employed by the classifying Government throughout the period during which the classifying Government may maintain such classifications.

2. The operating procedures for the implementation of the General Security Information Agreement, dated 25 March 1963, between the Governments apply to activities under this Memorandum of Agreement.

ARTICLE IV

DURATION

1. This MOA will remain in effect for a five-year period following its signing and will be extended for successive five-year periods, if at the end of each five-year interval the Governments mutually agree to such an extension.

2. If, however, either Government considers it necessary for compelling national reasons to terminate its participation under this MOA before the end of the five-year period, or any extension thereof, written notification of its intention will be given to the other Government six months in advance of the effective date of termination. Such notification of intent shall become a matter of immediate consultation with the other Government to enable the Governments fully to evaluate the consequences of such termination and, in the spirit of cooperation, to take such actions as necessary to alleviate problems that may result from the termination. In this connection, although the MOA may be terminated by the Parties, any contract entered into consistent with the terms of this MOA shall continue in effect, unless the contract is terminated in accordance with its own terms. Moreover, Article I, Sections 4 and 6 and Article III of this MOA will continue in full force and effect after, and notwithstanding, the expiration or termination of this MOA.

For the Government of Israel The Minister of Defense	For the United States Government The Secretary of Defense
E. Weizman	Harold Brown
Date 19 March 1979	Date 19 March 1979

ANNEX A

LISTING OF COOPERATIVE R&D EFFORTS

I. Development Data Exchange Program. General revitalization of existing annexes to improve exchange of development data with specific emphasis in the following areas:

(To be jointly determined by both Governments)

II. Complementary/Competitive Development Programs

(To be jointly determined by both Governments. "Competitive Development Programs" refers to programs to be conducted in one of the countries addressing defense equipment needs that the subject of development work in the other country with the objective of affording an alternate means for satisfying such needs.)

III. Scientist-Engineer Exchange Program

(To be jointly determined by both Governments)

ANNEX B

Listing of non R&D items of equipment and services covered by this MOA.

(To be jointly determined by both Governments)

ATTACHMENT 1

Membership, terms of reference for the joint U.S. DoD Israel MOD Committee, designated points of contact, and arrangements concerning implementation of the MOA.

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FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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For historical research for the period before January 1, 1973, see the "List of CFR Sections Affected, 1949-1963 and 1964-1972," published in three separate volumes. No amendments were published in the FEDERAL REGISTER during the period July 1, 1973 to July 1, 1974. For the period July 1, 1974 to July 1, 1979, see the section concerning "Primary Publication in the CFR" on page vii of the 1979 edition.

As an aid to the user, the Office of the Federal Register has prepared the following list of DAR sections, paragraphs, subparagraphs, and appendices that appear to be affected or amended by DPC or DAC circulars. (Beginning with DAC 76-20, July 1, 1980, amendments have appeared in replacement page format in the FEDERAL REGISTER.)

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(45 FR 44818, July 1, 1980)

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(45 FR 44902, July 1, 1980)

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(45 FR 81402, Dec. 10, 1980)

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(45 FR 81402, Dec. 10, 1980)

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7-2003.68	7:522.
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7-2003.69	7:524-B.
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2-201	2:9, 2:11, 2:17
3-501	3:66, 3:66-C, 3:70
3-507.2	3:74
3-603.1	3:78
3-1300.7	3:193
4-110.1	4:9
Section IV, Part 6 (Reserved) (4-601 through 4-606 deleted).	4:35, 4:37 (4:36 removed)
4-1104.10	4:67
4-1104.15	4:70
Section IV, Part 12 (add)	4:72
4-1200	4:72
4-1201	4:72
4-1202	4:72

DAC 76-28—Continued

(46 FR 50880, October 14, 1981)

DAR paragraph	Replacement pages
4-1203	4:72
4-1203.1	4:72
4-1203.2	4:72, 4:73
4-1203.3	4:73
4-1203.4	4:73 through 4:76
5-701	5:34
Section VI, Table of Contents	4
6-001.6	6:3
6-303	6:16
6-1310.3	6:59

Volume II

DAR paragraph	Replacement pages
7-104.14	7:54-B
7-104.20	7:57
7-104.30	7:73
7-104.32	7:75
7-104.34	7:76-A
7-104.104	7:140-D
7-204.43	7:204
7-303.43	7:237
7-403.36	7:262
7-603.26	7:304
7-606.16	7:330
7-705.19	7:368
7-902.16	7:390
7-1401.13	7:422
7-1702.24	7:439
7-1802.2	7:442
7-1903.31	7:448
7-1910.5	7:463
7-2003.80	7:526-C
7-2003.89	7:526-E through 7:526-H
8-216	8:22
8-600	8:33
8-601	8:33
8-602.1	8:33
8-602.2	8:33
10-405	10:21
12-1007.2	12:44-E
15-205.23	15:29
15-205.25	15:29-A, 15:30

Volume III

DAR paragraph	Replacement pages
22-107	22:7
Appendix A	A:1 through A:26
I-301	I:9

DAC 76-29

(46 FR 53026, October 26, 1981)

Volume I

DAR paragraph	Replacement pages
4-113	4:16.
Section IV, Part 2 deleted [reserved] (4-200 through 4-205.5 deleted).	4:22 (4:23 through 4:28 removed).

DAC 76-29—Continued

(46 FR 53026, October 26, 1981)

Volume II

DAR paragraph	Replacement pages
7-302.23	7:214, 7:215, 7:218, 7:218-A, 7:222 through 7:224, 7:227 through 7:230, 7:230-A through 7:230-G, 7:231.
7-402.22	7:254.
7-503.9	7:270.
7-602.42	7:294.
7-603.16	7:300.
7-606.25	7:332.
7-608.14	7:342.
7-705.8	7:367.
7-902.8	7:389.
7-1702.4	7:433.
Section IX table of contents	1 through 4.
9-000	9:1.
9-100	9:2.
9-107 [reserved]	9:5.
9-108 [reserved]	9:5.
9-109 [reserved]	9:5 (9:8 through 9:26 removed).
Section IX, part 7 (add)	9:61.
9-700 (add)	9:61.
9-701 (add)	9:61.
9-701.1 (add)	9:61.
9-701.2 (add)	9:61 through 9:63, 9:64.
9-701.3 (add)	9:64 through 9:68, 9:69.
9-701.4 [reserved]	9:69.
9-701.5 [reserved]	9:69.
9-701.6 (add)	9:69.
9-701.7 (add)	9:69.
9-701.8 (add)	9:69, 9:70.
9-701.9 (add)	9:70.
9-702 (add)	9:70, 9:71.
9-702.1 (add)	9:71.
9-702.2 (add)	9:71, 9:72.
9-702.3 (add)	9:72 through 9:75, 9:76.
9-702.4 [reserved]	9:76.
9-702.5 [reserved]	9:76.
9-702.6 (add)	9:76.
9-702.7 (add)	9:77.
9-702.8 (add)	9:77, 9:78, 9:79.
9-702.9 (add)	9:79.
9-703 (add)	9:79.
9-703.1 (add)	9:79, 9:80.
9-703.2 (add)	9:80.
9-703.3 (add)	9:80, 9:81.
9-703.4 (add)	9:81.
9-703.5 (add)	9:81, 9:82, 9:83.
9-703.6 (add)	9:83 through 9:88, 9:89.
9-704 (add)	9:89.

Volume III

DAR paragraph	Replacement pages
18-908	18:58.
21-112.1	21:8-A, 21:8-B.

DAC 76-30

(46 FR 53076, October 28, 1981)

Volume I

DAR paragraph	Replacement pages
1-332	1:74.

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(46 FR 53076, October 28, 1981)

DAR paragraph	Replacement pages
1-340 [reserved]	1:77-A.
1-406	1:83.
1-1201	1:182.
1-1202	1:182, 1:183.
2-201	2:7, 2:9, 2:17.
3-201	3:5.
3-501	3:62, 3:66, 3:70.
3-607.3	3:85.
3-705	3:107, 3:108.
Section III, Part 14 (add)	3:194.
3-1400 (add)	3:194.
3-1401 (add)	3:194, 3:195.
3-1402 (add)	3:195, 3:196.
3-1403 (add)	3:196, 3:197, 3:198.
3-1404 (add)	3:198.
3-1405 (add)	3:199.
3-1406 (add)	3:199.
4-106.1	4:4.
4-107.4	4:8-B.
5-102.1	5:4.
5-207	5:23.
Volume II	
7-104.36 (add)	7:88, 7:89.
7-104.78 [reserved]	7:123.
7-204.52 [reserved]	7:204.
7-204.66 [reserved]	7:205.
7-303.53 [reserved]	7:238.
7-303.68 [reserved]	7:241.
7-403.48 [reserved]	7:263.
7-403.64 [reserved]	7:266.
7-504.12 [reserved]	7:270.
7-603.61 (delete)	7:314-D.
7-603.62 (delete)	7:314-D.
7-606.32 (delete)	7:332.
7-606.33 (delete)	7:332.
7-705.27 [reserved]	7:369.
7-705.33 (delete)	7:369.
7-705.34 (delete)	7:369.
7-705.35 (delete)	7:369.
7-902.45 [reserved]	7:391.
7-1903.47 [reserved]	7:456.
7-1910.35 [reserved]	7:464.
7-2003.91 (add)	7:526-I.
7-2102.11	7:537.
7-2102.12 [reserved]	7:537.
7-2102.13 [reserved]	7:537.
7-2102.14 [reserved]	7:537.
7-2102.15 [reserved]	7:537.
13-301	13:8, 13:9.
15-205.3	15:13, 15:14.
15-205.35	15:37, 15:38, 15:39.
Volume III	
18-109	18:6.
21-125	21:18, 21:19.
Section XXI, Part 4 (add)	21:30.
21-400 (add)	21:30.
21-401 (add)	21:30.
24-205.3	24:16.
B-201	B:6.
B-306.1	B:15.
C-201	C:6.
C-306.1	C:13.
F200.1195	F209, F210.
F200.1342	F211, F212.

DAC 76-31

(47 FR 9399, March 5, 1982)

DAR paragraph	Replacement pages
Volume I	
3-404.3	3:32
3-605.2	3:79-A
3-605.3	3:81
3-709	3:109
Volume II	
7-104.35	7:82, 7:83, 7:84, 7:84-B through 7:84-D, 7:85, 7:86 through 7:86-D, 7:87
7-1400	7:420
7-1401	7:420
7-1401.3 (deleted) Reserved	7:420
7-1401.4	7:420
7-1401.5	7:420, 7:421, 7:421-A
7-1401.6	7:421-A, 7:421-B
7-1401.8	7:421-B
7-1401.9 (deleted) Reserved	7:421-B
7-1401.10 (deleted) Reserved	7:421-B
7-1401.14 (add)	7:422
7-2003.60	7:520, 7:520-A
10-202	10:15
15-205.16	15:26
15-205.51 (add)	15:52, 15:52-A
Volume III	
16-206.1	16:14, 16:15
16-401.2	16:18, 16:19
18-402.1	18:16
19-208.2	19:10
19-213.1	19:12
19-301.2	19:15
19-403.1	19:18
20-503	20:27
22-702 (add)	22:28
22-703 (formerly 22-702)	22:28
22-704 (formerly 22-703)	22:28
22-704 (b) and (c) (add)	22:28-A, 22:28-B
23-103 (add (a)(xi))	23:5
23-108	23:8-A
25-103	25:2, 25:2-A
E-503	E:42-A
E-503.1	E:42-B
E-503.2	E:42-B, E:43
E-511.2	E:49
E-511.3	E:49, E:53, E:54, E:55
E-517	E:57
E-530 (add)	E:65-B
E-530.1 (add)	E:65-B, E:65-C
E-530.2 (add)	E:65-C
E-530.3 (add)	E:65-C
E-530.4 (add)	E:65-C, E:65-D
E-530.5 (add)	E:65-D
E-530.6 (add)	E:65-D
E-530.7 (add)	E:65-D
E-530.8 (add)	E:65-D
I-104 (add (a)(6))	I:3
I-401	I:19
I-501	I:23
I-601	I:26
I-702 (Tables 3 and 4)	I:29, I:30, I:31
I-702 (Table 5 deleted)	I:32 removed

DAC 76-32

(47 FR 37084, August 25, 1982)

DAR paragraph	Replacement pages
Volume I	
1-342(d)	1:77-B.
Section III, Part 13 (Title)	3:190.
3-1300 (Title)	3:190.
3-1301 (add)	3:193.
3-1301.1 (add)	3:193.
3-1301.2 (add)	3:193, 3:193-A.
3-1301.3 (add)	3:193-B.
3-1301.4 (add)	3:193-B.
3-1301.5 (add)	3:193-C.
3-1301.6 (add)	3:193-C.
Volume II	
13-303	13:10.
15-205.50	15:52, 15:52-A.
Volume III	
Appendix N	N:1, N:14, N:30, N:31, N:34, N:38, N:39, N:44, N:46, N:47, N:50, N:53 through N:61, N:82 through N:88, N:90 through N:93, N:95, N:96, N:99, N:100, N:102, N:104 through N:116.

DAC 76-33

(47 FR 37129, August 25, 1982)

DAR paragraph	Replacement pages
Volume I	
1-201.14	1:17.
2-201	2:11.
2-501	2:43.
2-503.1	2:45.
3-302	3:19.
3-303	3:20.
3-501	3:61, 3:62, 3:63, 3:66-C, 3:70, 3:70-A.
3-608.2	3:92.
3-809	3:155, 3:157, 3:157-A.
3-1000	3:165.
3-1001	3:165.
3-1002	3:165.
3-1003.1	3:165, 3:166, 3:167.
3-1003.2	3:167.
3-1004 (add)	3:167, 3:168, 3:169.
3-1005 (add)	3:169, 3:170.
3-1006 (add)	3:170 (3:171 and 3:172 removed).
6-504.2	6:24.
Volume II	
7-603.60	7:314, 7:314-A, 7:314-B, 7:314-C.
7-2003.14	7:502-A, 7:502-B.
15-201.3	15:7, 15:8.
15-201.6	15:9, 15:9-A.

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(47 FR 37129, August 25, 1982)

DAR paragraph	Replacement pages
15-205.2	15:12.
15-205.11	15:24.
15-205.17	15:27-A.
15-205.31	15:32.
Volume III	
18-402.2	18:17.
20-502	20:27.
20-506	20:28.
22-501.5	22:17.
22-503.1	22:18.
22-503.2	22:19.
H-502	H:35, H:36.
H-606.1	H:47.
H-606.3	H:50, H:50-A.
J-502	J:12.

CHANGES TO DAR SUPPLEMENT NO. 2—NOT IN CFR

	Page
S2-101.1	S2-1.
S2-102.1	S2-2.
S2-102.2	S2-5.
S2-301	S21-5.
S2-301.2	S2-15

DAC 76-34

(47 FR 37380, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1-109.2	1:7, 1:8.
1-109.3	1:8.
1-109.4	1:8, 1:8-A.
1-319 (deleted) Reserved	1:34, 1:37 (1:35 and 1:36 removed).
1-701.1	1:104, 1:107.
1-701.5	1:111.
1-703	1:116-A.
1-704.1	1:120.
1-704.3	1:122-B.
1-705.4	1:128.
1-706.3	1:142-C.
1-707.1	1:146.
1-707.2	1:146-B, 1:148.
1-800	1:150.
1-805.4 (deleted) Reserved	1:158.
2-201	2:11.
3-501	3:66-C, 3:67.
3-608.2	3:90.
3-801.2	3:111.
3-807.4	3:126.
6-001.5	6:2.
6-803.2	6:37.
6-1305.8	6:58.
6-1310.3	6:59, 6:60.
6-1403.2	6:69.
6-1406.1	6:74.
6-1406.5	6:118.

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(47 FR 37380, August 26, 1982)

DAR paragraph	Replacement pages
6-1406.6	6:119.
6-1406.7	6:130, 6:133
Volume II	
7-104.3	7:32.
7-104.11 (deleted) Reserved	7:51.
7-104.14	7:52-B, 7:52-D, 7:53, 7:53-B, 7:54-A, 7:54-B.
7-204.11 (deleted) Reserved	7:194.
7-303.4 (deleted) Reserved	7:231.
7-403.4 (deleted) Reserved	7:259.
7-602.26 (deleted) Reserved	7:288.
7-605.32 (deleted) Reserved	7:327.
7-607.17 (deleted) Reserved	7:339.
7-607.26 (deleted) Reserved	7:339.
7-702.38 (deleted) Reserved	7:360.
7-703.30 (deleted) Reserved	7:363.
7-901.24 (deleted) Reserved	7:388.
7-1909.12 (deleted) Reserved	7:461.
7-1909.25 (deleted) Reserved	7:461.
7-2003.23	7:507.
7-2101.24 (deleted) Reserved	7:535.
15-205.51	15:52-B
Volume III	
18-402.3	18:18, 18:18-A.
Section XXI, Part 4 (deleted)	21:30 removed.

DAC 76-35

(47 FR 37436, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1-329.1	1:65, 1:71.
1-329.2 (deleted)	1:65.
1-329.3 (deleted)	(1:66 through 1:70 removed).
1-329.4 (deleted)	
Volume III	
Appendix L, Table of Contents	1.
Appendix L (Reprint of DoD Directive 5400.7 and DoD Regulation 5400.7-R).	L:1 through L:74.

DAC 76-36

(47 FR 37476, August 26, 1982)

DAR paragraph	Replacement pages
Volume I	
1-109.2	1:8.
1-340	1:77-A.
1-406	1:82.
1-601.1	1:90.
1-603.1	1:91.
1-603.2	1:91.
1-603.3	1:91.
1-603.4	1:91-A, 1:93.

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(47 FR 37476, August 26, 1982)

DAR paragraph	Replacement pages
1-607	1:98.
1-609.6	1:100.
1-702	1:116.
1-707.1	1:146.
1-707.2	1:146-B, 1:147, 1:148.
1-905.3	1:162.
1-906	1:165.
2-201	2:7, 2:17.
2-407.3	2:36, 2:37.
2-407.5	2:38
2-407.6	2:38
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3-501	3:62, 3:70
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7-104.14	7:52-B, 7:53, 7:53-A, 7:53-B, 7:54-B.
7-104.78	7:123, 123-A.
7-204.66	7:205.
7-303.68	7:241.
7-403.64	7:266.
7-603.61	7:314-D.
7-606.21 (deleted) Reserved	7:332.
7-606.32	7:332.
7-705.33	7:369.
7-705.34	7:369.
7-902.45	7:391.
7-2003.35	7:512.
8-101.15	8:3.
13-301	13:7, 13:8.
3-306.5	13:13.
13-312 (Index of IPE Handbooks).	13:17 through 13:19 (next page is 13:21).
Volume III	
24-101.10	24:2.
24-205.3	24:16, 24:17.
Appendix B, Table of Contents	1, 2.
B-102.11	B:3.
B-306	B:14, B:15.
B-316	B:19.
B-402	B:21.
B-403	B:21.
Appendix C, Table of Contents	2.
C-102.11	C:3.
C-306	C:11, C:12.
E-603.3	E:68.
E-611	E:74.
E-613	E:74
E-614	E:74, E:75
E-615	E:75.
E-616	E:75.
E-617	E:75.
E-617.1	E:76.
E-617.4	E:76.
E-617.5	E:76-A.
E-623	E:79.
Appendix F, Table of Contents	2, 5 and 6
F-100.294	F64-K, F64-L.
F-100.295	F64-M, F64-N.
F-200.1131	F202 (next page is F204-A).
F-200.1140-1 (deleted)	F203 (page removed).
F-200.1140-1 (reverse) (deleted)	F204 (page removed).